15/pt. 300-799/991

code of federal regulations

Commerce and Foreign Trade

15

PARTS 300 TO 799
Revised as of January 1, 1991

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Commerce and Foreign Trade

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PARTS 300 TO 799

Revised as of January 1, 1991

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 15—Commerce and Foreign Trade is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 0-299, 300-799, and Part 800-End. The first volume containing Parts 0-299 is comprised of Subtitle A—Office of the Secretary of Commerce, Chapter I—Bureau of the Census, and Chapter II—National Institute of Standards and Technology. The second volume containing Parts 300-799 is comprised of Chapter III—International Trade Administration and Chapter IV—Foreign-Trade Zones Board. The third volume containing Part 800-End is comprised of Chapter VII—Bureau of Export Administration, Chapter VIII—Bureau of Economic Analysis, Chapter IX—National Oceanic and Atmospheric Administration, Chapter XII—United States Travel Service, Chapter XIII—East-West Foreign Trade Board, Chapter XIV—Minority Business Development Agency, Chapter XX—Office of the United States Trade Representative, and Chapter XXIII—National Telecommunications and Information Administration. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1991.

A redesignation table appears in the Finding Aids section of the volume containing Parts 300-799.

For this volume Ina C. Masters was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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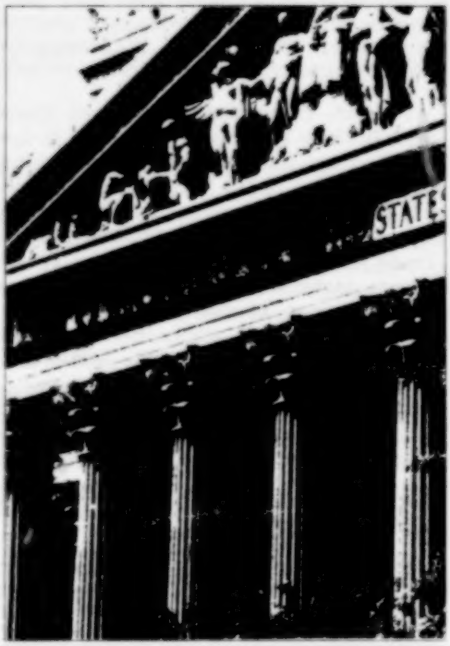

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Title 15—Commerce and Foreign Trade

(This book contains Parts 300-799)

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EDITORIAL NOTE: Nomenclature changes to Chapter III appear at 51 FR 34586, Sept. 30, 1986.

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SUBCHAPTER A—MISCELLANEOUS REGULATIONS

PART 301—INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

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AUTHORITY: Sec. 6(c), Pub. L. 89-651, 80 Stat. 897 (19 U.S.C. 1202).

SOURCE: 47 FR 32517, July 28, 1982, unless otherwise noted.

§ 301.1 General provisions.

(a) *Purpose.* This part sets forth the regulations of the Department of Commerce and the Department of the Treasury applicable to the duty-free importation of scientific instruments and apparatus by public or private nonprofit institutions.

(b) *Background.* (1) The Agreement on the importation of Educational, Scientific and Cultural Materials (Florence Agreement; "the Agreement") is a multinational treaty, contracted to by approximately 89 countries, which seeks to further the cause of peace through the freer exchange of ideas and knowledge across national boundaries, primarily by eliminating tariffs on certain educational, scientific and cultural materials.

(2) Annex D of the Agreement provides that scientific instruments and apparatus intended exclusively for educational purposes or pure scientific research use by qualified nonprofit institutions shall enjoy duty-free entry if instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

(3) Pub. L. 89-651, the Educational, Scientific, and Cultural Materials Importation Act of 1966 (19 U.S.C. 1202; "the Act"), implements the Agreement in the United States. Section 6(c) of the Act gives effect to Annex D of the Agreement. This section added tariff item 851.60 to the Tariff Schedules of the United States (TSUS) to provide for the duty-free importation of instruments and apparatus "entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes * * * if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States." Headnote 1 to Schedule 8, Part 4, TSUS, was amended by Pub. L. 89-651 and provides for the use, disposition and transfer of articles and their repair components accorded duty-free entry under tariff items 851.60 and 851.65, respectively, and Headnote 6, added by Pub. L. 89-651, sets forth the duty-free procedures and responsibilities.

(c) *Summary of statutory procedures and requirements.* (1) Headnote 1 provides, among other things, that articles covered by tariff items 851.60 (scientific instruments and apparatus) and 851.65 (repair components therefor) must be exclusively for the use of the institutions involved and not for distribution, sale or other commercial use within five years after being entered. These articles may be transferred by a qualified nonprofit institution to another such institution without duty liability being incurred. However, if such article is transferred other than as provided by the preceding sentence, or is used for commercial purposes within five years after having been entered, duty shall be assessed in accordance with the procedures established in Headnote 1.

(2) Pursuant to Headnote 6 an institution desiring to enter an instrument or apparatus under tariff item 851.60 TSUS must file an application with

the Secretary of the Treasury (U.S. Customs Service) in accordance with these regulations. If the application is made in accordance with the regulations, notice of the application is published in the FEDERAL REGISTER to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff) whose decision as to whether or not duty-free entry may be accorded the instrument is published in the FEDERAL REGISTER. An appeal of the final decision may be filed with the United States Court of Customs and Patent Appeals, on questions of law only, within 20 days after publication of the decision in the FEDERAL REGISTER.

(3) Repair components for instruments or apparatus admitted duty-free under tariff item 851.60 require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(d) *Authority and delegations.* The Act authorizes the Secretaries of Commerce and the Treasury to prescribe joint regulations to carry out their functions under Headnote 6, TSUS. The Secretary of the Treasury has delegated authority to the Assistant Secretary for Enforcement and Operations, who has retained rulemaking authority and further delegated administration of the regulations to the Commissioner of the U.S. Customs Service. The authority of the Secretary of Commerce has been delegated to the Deputy Assistant Secretary for Import Administration who has retained rulemaking authority and further delegated administration of the regulations to the Director of the Statutory Import Programs Staff.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982]

§ 301.2 Definitions.

For the purposes of these regulations and the forms used to implement them:

(a) "Director" means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(b) "Customs" means the U.S. Customs Service and the "The Commissioner" means Commissioner of the U.S. Customs Service, or the official(s) designated to act on the Commissioner's behalf.

(c) "Customs Port" or "the Port" means the port where a particular claim has been or will be made for duty-free entry of a scientific instrument or apparatus under tariff item 851.60.

(d) "Entry" means entry of an instrument into the Customs territory of the United States for consumption or withdrawal of an instrument from a Customs bonded warehouse for consumption.

(e) "United States" includes only the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(f) "Instrument" means only instruments and apparatus classifiable under the tariff items specified in headnote 6(a) of part 4 of Schedule 8. A combination of basic instrument or apparatus and accompanying accessories shall be treated as a single instrument provided that, under normal commercial practice, such combination is considered to be a single instrument and provided further that the applicant has ordered or, upon favorable action on its application, firmly intends to order the combination as a unit. Unless the context indicates otherwise, instrument or apparatus shall mean a foreign "instrument or apparatus" for which duty-free entry is sought under tariff item 851.60. Spare parts typically ordered and delivered with an instrument are also considered part of an instrument for purposes of these regulations. The term "instruments" shall not include:

(1) Materials or supplies used in the operation of instruments and apparatus such as paper, cards, tapes, ink, recording materials, expendable laboratory materials, apparatus that loses identity or is consumed by usage or other materials or supplies.

(2) Ordinary equipment for use in building construction or maintenance; or equipment for use in supporting activities of the institution, such as its administrative offices, machine shops, libraries, centralized computer facili-

ties, eating facilities, or religious facilities; or support equipment such as copying machines, glass working apparatus and film processors.

(3) General purpose equipment such as air conditioners, electric typewriters, electric drills, refrigerators.

(4) General-purpose computers. Accessories to computers which are not eligible for duty-free treatment are also ineligible. Scientific instruments containing embedded computers which are to be used in a dedicated process or in instrument control, as opposed to general data processing or computation, are, however, eligible for duty-free consideration.

(5) Instruments initially imported solely for testing or review purposes which were entered under bond under tariff item 864.30, subject to the provisions of Headnote 1(a) of Subpart C, Part 5, Schedule 8 TSUS and must be exported or destroyed within the time period specified in that headnote.

(g) "Domestic instrument" means an instrument which is manufactured in the United States. A domestic instrument need not be made exclusively of domestic components or accessories.

(h) "Accessory" has the meaning which it has under normal commercial usage. An accessory, whether part of an instrument or an attachment to an instrument, adds to the capability of an instrument. An accessory for which duty-free entry is sought under item 851.60 shall be the subject of a separate application when it is not an accompanying accessory.

(i) "Accompanying accessory" means an accessory for an instrument that is listed as an item in the same purchase order and that is necessary for accomplishment of the purposes for which the instrument is intended to be used.

(j) "Ancillary equipment" means an instrument which may be functionally related to the foreign instrument but is not operationally linked to it. Examples of ancillary equipment are vacuum evaporators or ultramicrotomes, which can be used to prepare specimens for electron microscopy. Further, equipment which is compatible with the foreign instrument, but is also clearly compatible with similar domestic instruments, such as automatic sampling equipment sold for use with a variety of mass spectrometers, will be treated as ancillary equipment. A separate application will be required for ancillary equipment even if ordered with the basic instrument.

(k) "Components" of an instrument means parts or assemblies of parts which are substantially less than the instrument to which they relate. A component enables an instrument to function at a specified minimum level, while an accessory adds to the capability of an instrument. Applications shall not be accepted for components of instruments that did not enter duty-free under tariff item 851.60 or for components of instruments being manufactured or assembled by a commercial firm or entity in the U.S. In determining whether an item is a component ineligible for duty-free consideration or an accessory eligible for such consideration, Customs shall take into account such factors as the item's complexity, novelty, degree of integration and pertinency to the research purposes to be performed by the instrument as a whole.

(l) "Produced for stock" means an instrument which is manufactured, on sale and available from a stock.

(m) "Produced on order" means an instrument which a manufacturer lists in current catalog literature and is able and willing to produce and have available without unreasonable delay to the applicant.

(n) "Custom-made" means an instrument which a manufacturer is willing and able to make to purchaser's specifications. Instruments resulting from a development effort are treated as custom-made for the purposes of these regulations. Also, a special-order variant of a produced on order instrument, with significant modifications specified by the applicant, may be treated as custom-made.

(o) "Same general category" means the category in which an instrument is customarily classified in trade directories and product-source lists, e.g., scanning electron microscope, mass spectrometer, light microscope, x-ray spectrometer.

(p) "Comparable domestic instrument" means a domestic instrument capable or potentially capable of fulfilling the applicant's technical requirements or intended uses, whether or not in the same general category as the foreign instrument.

(q) "Specifications" means the particulars of the structural, operational and performance characteristics or capabilities of a scientific instrument.

(r) "Guaranteed" specifications are those specifications which are an explicit part of the contractual agreement between the buyer and the seller (or which would become part of the agreement if the buyer accepted the seller's offer), and refer only to the minimum and routinely achievable performance levels of the instrument under specified conditions. If a capability is listed or quoted as a range (e.g., "5 to 10 angstroms") or as a minimum that may be exceeded (e.g., "5 angstroms or better"), only the inferior capability may be considered the guaranteed specification. Evidence that specifications are "guaranteed" will normally consist of their being printed in a brochure or other descriptive literature of the manufacturer; being listed in a purchase agreement upon which the purchase is conditioned; or appearing in a manufacturer's formal response to a request for quote. If, however, no opportunity to submit a bid was afforded the domestic manufacturer or if, for any other reason, comparable guaranteed specifications of the foreign and domestic instruments do not appear on the record, other evidence relating to a manufacturer's ability to provide an instrument with comparable specifications may, at the discretion of the Director, be considered in the comparison of the foreign and domestic instruments' capabilities.

(s) "Pertinent" specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent. For example, a design feature, such as a small number of knobs or controls on an instrument primarily designed for research purposes, would be a convenience. The ability to fit an instrument into a small room, when the required operations could be performed in a larger room, would be either a cost consideration or a matter of convenience and not a pertinent specification. In addition, mere difference in design (which would, for example, broaden the educational experience of students but not provide superior scientific capability) would not be pertinent. Also, unless the applicant demonstrates it is necessary for the accomplishment of its specific scientific purposes, the terms does not extend to such characteristics as size, weight, appearance, durability, reliability, complexity or (simplicity), ease of operation, ease of maintenance, productivity, versatility, "state of the art" design, specific design, or other such characteristics.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982]

§ 301.3 Application for duty-free entry of scientific instruments.

(a) *Who may apply.* An applicant for duty-free entry of an instrument under tariff item 851.60 must be a public or private nonprofit institution which is established for educational or scientific purposes and which has placed a bona fide order or has a firm intention to place a bona fide order for a foreign instrument within 60 days following a favorable decision on the institution's application.

(b) *Application forms.* Applications must be made on form ITA-338P which may be obtained from the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, or from the various District Offices of the U.S. Department of Commerce. (Approved by the Office of Management and Budget under control number 0625-0037.)

(c) *Where to apply.* Applications must be filed with the U.S. Customs Service, Department of the Treasury, at the address specified on page 1 of the form.

(d) Five copies of the form, including relevant supporting documents, must be submitted. One copy of the form shall be signed in the original by the person in the applicant institution under whose direction and control the foreign instrument will be used and who is familiar with the intended uses of the instrument. The remaining four copies of the form may be copies of the original. Attachments should be fully identified and referenced to the question(s) on the form to which they relate.

(e) A single application (in the requisite number of copies) may be submitted for any quantity of the same type or model of foreign instrument provided that the entire quantity is intended to be used for the same purposes and provided that all units are included on a single purchase order. A separate application shall be submitted for each different type or model or variation in the type or model of instrument for which duty-free entry is sought even if covered by a single purchase order. Orders calling for multiple deliveries of the same type or model of instrument over a substantial period of time may, at the discretion of the Director, require multiple applications.

(f) Failure to answer completely all questions on the form in accordance with the instructions on the form or to supply the requisite number of copies of the form and supporting documents may result in delays in processing of the application while the deficiencies are remedied, return of the application without processing, or denial of the application without prejudice to resubmission. Any questions on these regulations or the application form should be addressed to the Director.

[47 FR 32517, July 28, 1982, as amended at 50 FR 11501, Mar. 22, 1985]

§ 301.4 Processing of applications by the Department of the Treasury (U.S. Customs Service).

(a) *Review and determination.* The Commissioner shall date each application when received by Customs. If the application appears to be complete, the Commissioner shall determine:

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under tariff item 851.60. In making this determination the Commissioner will generally review the application to determine if the applicant has attached a copy of the letter from the Internal Revenue Service (IRS) granting the institution nonprofit status (exemption from Federal income tax) under section 501(c)(3) of the IRS Code or will determine if the institution is listed in a current edition of "Cumulative List of Exempt Organizations";

(2) Whether the instrument falls within the classes of instruments eligible for duty-free entry consideration under tariff item 851.60 (For eligible classes see Headnote 6(a), Part 4, Schedule 8, TSUS); and

(3) Whether the instrument which is the subject of the application is intended for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: Distribution or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee or other valuable consideration. In making the above determination, the Commissioner may consider, among other things, whether the results of any research to be performed with the instrument will be fully and timely made available to the public. For the purposes of this section, use of an instrument for the treatment of patients is considered noncommercial.

If any of the Commissioner's determinations is in the negative, the application shall be found to be outside the scope of the Act and shall be returned to the applicant with a statement of the reason(s) for such findings.

(b) *Forwarding of applications to the Department of Commerce.* If the Commissioner finds the application to be within the scope of the Act and these regulations, the Commissioner shall (1) assign a number to the application and (2) forward one copy to the Secretary of the Department of Health and Human Services (HHS), and two copies, including the one that has been signed in the original, to the

Director. The Commissioner shall retain one copy and return the remaining copy to the applicant stamped "Accepted for Transmittal to the Department of Commerce." The applicant shall file the stamped copy of the form with the Port when formal entry of the article is made. If entry has already occurred under a claim of tariff item 851.60, the applicant (directly or through his/her agent) shall at the earliest possible date supply the stamped copy to the Port. Further instructions for entering instruments are contained in § 301.8 of the regulations.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985]

§ 301.5 Processing of applications by the Department of Commerce.

(a) *Public notice and opportunity to present views.* (1) Within 10 days of receipt of an application from the Commissioner, the Director shall make a copy available for public inspection during ordinary business hours of the Department of Commerce. Unless the Director determines that an application has deficiencies which preclude consideration on its merits (e.g., insufficient description of intended purposes to rule on the scientific equivalency of the foreign instrument and potential domestic equivalents), he shall publish in the FEDERAL REGISTER a notice of the receipt of the application to afford all interested persons a reasonable opportunity to present their views with respect to the question "whether an instrument or apparatus of equivalent scientific value for the purpose for which the article is intended to be used is being manufactured in the United States." The notice will include the application number, the name and address of the applicant, a description of the instrument(s) for which duty-free entry is requested, the name of the foreign manufacturer and a brief summary of the applicant's intended purposes extracted from the applicant's answer to question 7 of the application. In addition, the notice shall specify the date the application was accepted by the Commissioner for transmittal to the Department of Commerce.

(2) If the Director determines that an application is incomplete or is otherwise deficient, he may request the applicant to supplement the application, as appropriate, prior to publishing the notice of application in the FEDERAL REGISTER. Supplemental information/material requested under this provision shall be supplied to the Director in two copies within 20 days of the date of the request and shall be subject to the certification contained in Question 11 of the form. Failure to provide the requested information on time shall result in a denial of the application without prejudice to resubmission.

(3) *Requirement for presentation of views (comments) by interested persons.* Any interested person or government agency may make written comments to the Director with respect to the question whether an instrument of equivalent scientific value, for the purposes for which the foreign instrument is intended to be used, is being manufactured in the United States. Except for comments specified in paragraph (a)(4) of this section, comments should be in the form of supplementary answers to the applicable questions on the application form. Comments must be postmarked no later than 20 days from the date on which the notice of application is published in the FEDERAL REGISTER. In order to be considered, comments and related attachments must be submitted to the Director in duplicate; shall state the name, affiliation and address of the person submitting the comment; and shall specify the application to which the comment applies. In order to preserve the right to appeal the Director's decision on a particular application pursuant to § 301.6 of these regulations, a domestic manufacturer or other interested person must make timely comments on the application. Separate comments should be supplied on each application in which a person has an interest. However, brochures, pamphlets, printed specifications and the like, included with previous comments, if properly identified, may be incorporated by reference in subsequent comments. If the Director

knows of the availability of a domestic instrument which may be comparable to the foreign instrument, he may: (i) Require the applicant to compare the domestic instrument with the foreign instrument; or (ii) compare the two instruments whether or not comments are received from a domestic manufacturer on the specific application.

(4) *Comments by domestic manufacturers.* Comments of domestic manufacturers opposing the granting of an application should:

(i) Specify the domestic instrument considered to be scientifically equivalent to the foreign article for the applicant's specific intended purposes and include documentation of the domestic instrument's guaranteed specifications and date of availability.

(ii) Show that the specifications claimed by the applicant in response to question 8 to be pertinent to the intended purpose can be equaled or exceeded by those of the listed domestic instrument(s) whether or not it has the same design as the foreign instrument; that the applicant's alleged pertinent specifications should not be considered pertinent within the meaning of § 301.2(s) of the regulations for the intended purposes of the instrument described in response to question 7 of the application; or that the intended purposes for which the instrument is to be used do not qualify the instrument for duty-free consideration under the Act.

(iii) Where the comments regarding paragraphs (a)(4)(i) and (a)(4)(ii) of this section relate to a particular accessory or optional device offered by a domestic manufacturer, cite the type, model or other catalog designation of the accessory device and include the specification therefor in the comments.

(iv) Where the justification for duty-free entry is based on excessive delivery time, show whether:

(A) The domestic instrument is as a general rule either produced for stock, produced on order, or custom-made and;

(B) An instrument or apparatus of equivalent scientific value to the article, for the purposes described in response to question 7, could have been produced and delivered to the applicant within a reasonable time following the receipt of the order.

(v) Indicate whether the applicant afforded the domestic manufacturer an opportunity to furnish an instrument or apparatus of equivalent scientific value to the article for the purposes described in response to question 7 and, if such be the case, whether the applicant submitted a formal invitation to bid that included the technical requirements of the applicant.

(5) *Untimely comments.* Comments must be made on a timely basis to ensure their consideration by the Director and the technical consultants, and to preserve the commenting person's right to appeal the Director's decision on an application. The Director, in his discretion, may entertain comments filed untimely to the extent that they contain factual information, as opposed to arguments, explanations or recommendations.

(6) *Provision of general comments.* A domestic manufacturer who does not wish to oppose duty-free entry of a particular application, but who desires to apprise the Director of the availability and capabilities of its instrument(s), may at any time supply documentation to the Director without reference to a particular application. Such documentation shall be routinely taken into account by the Director when applications involving comparable foreign instruments are received. The provision of general comments does not preserve the commentor's right to appeal the Director's decision on a particular application.

(7) *Provision of application to domestic manufacturers.* To facilitate timely comments, the Director may furnish copies of certain applications to domestic manufacturers who intend to comment on applications, provided:

(i) The manufacturer requests the service in writing;

(ii) The manufacturer provides copies of current company literature regarding the domestic instrument and its guaranteed capabilities; and

(iii) The manufacturer identifies the specific models or types of comparable foreign instrument(s) that it proposes to comment on. The Director may furnish for comment copies of the appropriate applications to the domestic manufacturer until the firm requests that the service be discontinued, provided the firm utilizes the service to supply written comments on applications. If the recipient of the service fails to avail itself of the opportunity to comment on appropriate applications for a period of one year, the Director may at his discretion discontinue the service. For reasons of cost and administrative burden, the service may be discontinued at the discretion of the Director. In such case the Director shall notify all recipients of the service in writing of such discontinuance.

(b) *Additions to the record.* The Director may solicit from the applicant or from foreign or domestic manufacturers, and agents thereof, or any other person or Government agency considered by the Director to have competence on any issue pertaining to an application, any additional information the Director deems necessary to the rendering of a decision. The Director may attach such conditions and time limitations deemed appropriate upon the provision of such information and may draw appropriate inferences from a person's failure to provide the requested information.

(c) *Advice from technical consultants.* (1) The Director shall consider any written advice from the Secretary of HHS, or his delegate, on the question whether a domestic instrument of equivalent scientific value to the foreign instrument, for the purposes for which the instrument is intended to be used, is being manufactured in the United States.

(2) After the comment period has ended (§ 301.5(a)(3)), the complete application and any comments received and related information are forwarded to the appropriate technical consultants for their written advice.

(3) The technical consultants are requested to provide their written recommendation within 30 days of the date of transmittal. The technical consultants relied upon for advice may include, but are not limited to, the National Institutes of Health (delegated the function by the Secretary of HHS), the National Bureau of Standards and the National Oceanographic and Atmospheric Administration.

(d) *Criteria for the determinations of the Department of Commerce*—(1) *Scientific equivalency.* (i) The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments (see § 301.2(s) for the definition of pertinent specification). Ordinarily, the Director will consider only those performance characteristics which are "guaranteed specifications" within the meaning of § 301.2(r) of this part. In no event, however, shall the Director consider performance capabilities superior to the manufacturer's guaranteed specifications or their equivalent. In making the comparison the Director may consider a reasonable combination of domestic instruments that combines two or more functions into an integrated unit if the combination of domestic instruments is capable of accomplishing the purposes for which the foreign instrument is intended to be used. If the Director finds that a domestic instrument possesses all of the pertinent specifications of the foreign instrument, he shall find that there is being manufactured in the United States an instrument of equivalent scientific value for such purposes as the foreign instrument is intended to be used. If the Director finds that the foreign instrument possesses one or more pertinent specifications not possessed by the comparable domestic instrument(s), the Director shall find that there is not being manufactured in the United States an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument is intended to be used.

(ii) Programs that may be undertaken at some unspecified future date shall not be considered in the Director's comparison. In making the comparison, the Director shall consider only the instrument and accompanying accessories described in the application and determined eligible by the U.S. Customs Service. The Director shall not consider the planned purchase of additional accessories or the planned conversion of the article at some unspecified future time for such programs.

(iii) In order for the Director to make a determination with respect to the "scientific equivalency" of the foreign and domestic instruments, the applicant's intended purposes must include either scientific research or science-related educational programs. Instruments used exclusively for nonscientific purposes have no scientific value, thereby precluding the requisite finding by the Director with respect to "whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States." In such cases the Director shall deny the application for the reason that the instrument has no scientific value for the purposes for which it is intended to be used. Examples of nonscientific purposes would be the use of an instrument in routine diagnosis or patient care and therapy (as opposed to clinical research); in teaching a nonscientific trade (e.g., printing, shoemaking, metalworking or other types of vocational training); in teaching nonscientific courses (e.g., music, home economics, journalism, drama); in presenting a variety of subjects or merely for presenting coursework, whether or not science related (e.g., video tape editors, tape recorders, projectors); and in conveying cultural information to the public (e.g., a planetarium in the Smithsonian Institution).

(2) *Manufactured in the United States.* An instrument shall be considered as being manufactured in the United States if it is customarily "produced for stock," "produced on order" or "custom-made" within the United States. In determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case. For example, in determining whether a domestic manufacturer is able to produce a custom-made instrument, the Director may take into account the production experience of the domestic manufacturer including (i) the types, complexity and capabilities of instruments the manufacturer has produced, (ii) the extent of the technological gap between the instrument to which the application relates and the manufacturer's customary products, (iii) the manufacturer's technical skills, (iv) the degree of saturation of the manufacturer's production capability, and (v) the time required by the domestic manufacturer to produce the instrument to the purchaser's specification. Whether or not the domestic manufacturer has field tested or demonstrated the instrument will not, in itself, enter into the decision regarding the manufacturer's ability to manufacture an instrument. Similarly, in determining whether a domestic manufacturer is willing to produce an instrument, the Director may take into account the nature of the bid process, the manufacturer's policy toward manufacture of the product(s) in question, the minimum size of the manufacturer's production runs, whether the manufacturer has bid similar instruments in the past, etc. Also, if a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument.

(3) *Burden of proof.* The burden of proof shall be on the applicant to demonstrate that no instrument of equivalent scientific value for the purposes for which the foreign instrument is to be used is being manufactured in the United States. Evidence of applicant favoritism towards the foreign manufacturer (advantages not extended to domestic firms, such as additional lead time, know-how, methods, data on pertinent specifications or intended uses, results of research or development, tools, jigs, fixtures, parts, materials or test equipment) may be, at the Director's discretion, grounds for rejecting the application.

(4) *Excessive delivery time.* Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. For purposes of this section, (i) except when objective and convincing evidence is presented that, at the time of order, the actual delivery time would significantly exceed quoted delivery time, no claim of excessive delivery time may be made unless the applicant has afforded the domestic manufacturer an opportunity to quote and the delivery time for the domestic instrument exceeds that for the foreign instrument; and (ii) failure by the domestic manufacturer to quote a specific delivery time shall be considered a non-responsive bid (see § 301.5(d)(2)). In determining whether the difference in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

(e) *Denial without prejudice to resubmission (DWOP).* The Director may, at any stage in the processing of an application by the Department of Commerce, DWOP an application if the application contains any deficiency which, in the Director's judgment, prevents a determination on its merits. The Director shall state the deficiences of the application in a letter to the applicant in making the provisional denial.

(1) The applicant has 60 days from the date of the DWOP to correct the cited deficiencies in the application unless a request for an extension of time for submission of the supplemental information has been received by the Director prior to the expiration of the 60-day period and is approved.

(2) The written request (letter or telegram) for an extension should indicate the reasons for the request and the amount of additional time needed. If granted, extensions of time will generally be limited to 30 days.

(3) Resubmissions must reference the application number of the earlier application. The resubmission shall be made by letter and filed in quadruplicate with the Director. The record of a resubmitted application shall include the original submission on file with the Department. Any new material or information contained in a resubmission, which should address the specific deficiencies cited in the DWOP letter, should be clearly labeled and referenced to the applicable question(s) on the application form. The resubmission should be signed and dated by the individual in the applicant institution who signed the original application or, in his/her absence, the individual in the applicant institution under whose direction and control the foreign instrument will be used and who is familiar with the intended uses of the instrument. The resubmission must be for the instrument covered by the original application unless the DWOP letter specifies to the contrary. The resubmission shall be subject to the certification contained in question 11 on the original application.

(4) If the applicant fails to resubmit within the applicable time period, the prior DWOP shall, irrespective of the merits of the case, result in a denial of the application.

(5) The Director shall use the postmark date of the fully completed resubmission in determining whether the resubmission was made within the allowable time period. Certified or registered mail, or some other means which can unequivocally establish the date of mailing, is recommended.

(6) The applicant may, at any time prior to the end of the resubmission period, notify the Director in writing that it does not intend to resubmit the application. Upon such notification, the application will be deemed to have been withdrawn. (See § 301.5(g).)

(7) Information provided in a resubmission that, in the judgment of the

Director, contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an orginal submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application. The resubmission should address the specific deficiencies cited in the DWOP. The Director may draw appropriate inferences from the failure of an applicant to attempt to provide the information requested in the DWOP.

(8) In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application.

(9) Upon receipt of a responsive resubmission the Director shall publish a notice in the FEDERAL REGISTER citing the number of the earlier application, the name and address of the applicant institution, the instrument(s) involved, and any other information the Director deems relevant. The notice will also include the FEDERAL REGISTER citation for the original notice of application. Procedures applicable to comments on the processing of original applications shall thereafter apply.

(f) *Decisions on applications.* The Director shall prepare a written decision granting or denying each application. However, when he deems appropriate, the Director may issue a consolidated decision on two or more applications. The Director shall promptly forward a copy of the decision to each applicant institution and to the FEDERAL REGISTER for publication.

(g) *Withdrawal of applications.* The Director shall discontinue processing an application withdrawn by the applicant and shall publish notice of such withdrawal in the FEDERAL REGISTER. If at any time while its application is pending before the Director, either during the intital application or resubmission stage, an applicant cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument or apparatus, the institution shall promptly notify the Director. Such notification shall constitute a withdrawal. Withdrawals shall be considered as having been finally denied for purposes of § 301.7(c) below.

(h) Nothing in this subsection shall be construed as limiting the Director's discretion at any stage of processing to insert into the record and consider in making his decision any information in the public domain which he deems relevant.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985]

§ 301.6 Appeals.

(a) An appeal from any decision made pursuant to § 301.5(f) may be taken, in accordance with headnote 6(e) to part 4 of Schedule 8, only to the U.S. Court of Customs and Patent Appeals and only on questions of law, within 20 days after publication of the decision in the FEDERAL REGISTER. If at any time while its application is under consideration by the Court of Customs and Patent Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

(b) An appeal may be taken by: (1) The institution which makes the application;

(2) A person who, in the proceeding which led to the decision, timely represented to the Secretary of Commerce in writing that he/she manufactures in the United States an instrument of equivalent scientific value for the purposes for which the instrument to which the application relates is intended to be used;

(3) The importer of the instrument, if the instrument to which the application relates has been entered at the time the appeal is taken; or

(4) An agent of any of the foregoing.

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Customs and Patent Appeals, Clerks' Office, Washington, DC 20439.

§ 301.7 Final disposition of an application.

(a) Disposition of an application shall be final when 20 days have elapsed after publication of the Director's final decision in the FEDERAL REGISTER (see § 301.6(a)) and no appeal has been taken pursuant to § 301.6 of these regulations, of if such appeal has been taken, when final judgment is made and entered by the Court.

(b) The Director shall notify the Customs Port when disposition of an application becomes final. If the Director has not been advised of the port of entry of the instrument, or if entry has not been made when the decision on the application becomes final, the Director shall notify the Commissioner of final disposition of the application.

(c) An instrument, the duty-free entry of which has been finally denied, may not be the subject of a new application from the same institution.

§ 301.8 Instructions for entering instruments through U.S. Customs under tariff item 851.60.

Failure to follow the procedures in this section may disqualify an instrument for duty-free entry notwithstanding an approval of an application on its merits by the Department of Commerce.

(a) *Entry procedures.* (1) An applicant desiring duty-free entry of an instrument may make a claim at the time of entry of the instrument into the Customs territory of the United States that the instrument is entitled to duty-free classification under tariff item 851.60.

(2) If no such claim is made the instrument shall be immediately classified without regard to tariff item 851.60, duty will be assessed, and the entry liquidated in the ordinary course.

(3) If a claim is made for duty-free entry under tariff item 851.60, the entry shall be accepted without requiring a deposit of estimated duties provided that a copy of the form, stamped by Customs as accepted for transmittal to the Department of Commerce in accordance with § 301.4(b), is filed simultaneously with the entry.

(4) If a claim for duty-free entry under tariff item 851.60 is made but is not accompanied by a copy of the properly stamped form, a deposit of the estimated duty is required. Liquidation of the entry shall be suspended for a period of 180 days from the date of entry. On or before the end of this suspension period the applicant must file with the Customs Port a properly stamped copy of the form. In the event that the Customs Port does not receive a copy of the properly stamped form within 180 days the instrument shall be classified and liquidated in the ordinary course, without regard to tariff item 851.60.

(5) Entry of an instrument after the Director's approval of an application. Whenever an institution defers entry until after it receives a favorable final determination on the application for duty-free entry of the instrument, the importer shall file with the entry of the instrument (i) the stamped copy of the form, (ii) the institution's copy of the favorable final determination and (iii) proof that a bona fide order for the merchandise was placed on or before the 60th day after the favorable decision became final pursuant to § 301.7 of these regulations. Liquidation in such case shall be made under tariff item 851.60.

(b) *Normal Customs entry requirements.* In addition to the above entry requirements mentioned in paragraph (a) of this section, the normal Customs entry requirements must be met. In most of the cases, the value of the merchandise will be such that the formal Customs entry requirements, which generally include the filing of a Customs entry bond, must be complied with. (For further information, see 19 CFR 142.3 and 142.4 (TD-221).)

(c) *Late filing.* Notwithstanding the preceding provisions of § 301.8 any document, form, or statement required by regulations in this section to be filed in connection with the entry may be filed at any time before liquidation of the entry becomes final, provided that failure to file at the time of entry or within the period for which a bond was filed for its production was not due to willful negligence or fraudulent intent. Liquidation of any entry becomes conclusive upon all persons if the liquidation is not protested in writing in accordance with 19 CFR Part 174, or the necessary document substantiating duty-free entry is not produced in accordance with 19 CFR 10.112, within 90 days after notice of liquidation. Upon notice of such final and conclusive liquidation, the Department of Commerce will cease the processing of any pending application for duty-free entry of the subject article. In all other respects, the provisions of this section do not apply to Department of Commerce responsibilities and procedures for processing applications pursuant to other sections of these regulations.

(d) *Payment of duties.* The applicant will be billed for payment of duties when Customs determines that such payment is due.

§ 301.9 Uses and disposition of instruments entered under item 851.60, TSUS.

(a) An instrument granted duty-free entry may be transferred from the applicant institution to another eligible institution provided the latter institution agrees not to use the instrument for commercial purposes within 5 years of the date of entry of the instrument. In such cases title to the instrument must be transferred directly between the institutions involved. An institution transferring a foreign instrument entered under item 851.60 within 5 years of its entry shall so inform the Customs Port in writing and shall include the following information:

(1) The name and address of the transferring institution.

(2) The name and address of the transferee.

(3) The date of transfer.

(4) A detailed description of the instrument.

(5) The serial number of the instrument and any accompanying accessories.

(6) The entry number, date of entry, and port of entry of the instrument.

(b) Whenever the circumstances warrant, and occasionally in any event, the fact of continued use for 5 years for noncommercial purposes by the applicant institution shall be verified by Customs.

(c) If an instrument is transferred in a manner other than specified above or is used for commercial purposes within 5 years of entry, the institution for which such instrument was entered shall promptly notify the Customs officials at the Port and shall be liable for the payment of duty in an amount determined on the basis of its condition as imported and the rate applicable to it.

§ 301.10 Importation of repair components under item 851.65 for article previously entered under item 851.60.

(a) An institution which owns an instrument entered under tariff item 851.60 and desires to enter repair components for such instrument under tariff item 851.65 may do so without regard to the application procedures applicable to entries under item 851.60 provided the institution certifies to the customs official at the port of entry upon entry of such components that they are needed repair components for an instrument owned by that institution and previously entered and classified under tariff item 851.60.

(b) Instruments entered under item 851.60 and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by tariff item 851.65, although they may, in certain circumstances, be considered non-dutiable under other Customs provisions (e.g., drawback within the specified period pursuant to 19 U.S.C. 1313(c)). Such instruments, if classified as dutiable by Customs, may nevertheless be made the subject of a new application under tariff item 851.60.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982]

PART 302—[RESERVED]

PART 303—WATCHES AND WATCH MOVEMENTS

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AUTHORITY: Pub. L. 97-446, 96 Stat. 2329 (19 U.S.C. 1202); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C.A. 1681, note).

SOURCE: 49 FR 17740, Apr. 25, 1984, unless otherwise noted.

§ 303.1 Purpose.

(a) This part implements the responsibilities of the Secretaries of Commerce and the Interior ("the Secretaries") under Pub. L. 97-446, enacted on 12 January 1983, which substantially amended Pub. L. 89-805, enacted 10 November 1966, amended by Pub. L. 94-88, enacted 8 August 1975, and amended by Pub. L. 94-241, enacted 24 March 1976. The law provides for exemption from duty of territorial watches and watch movements without regard to the value of the foreign materials they contain, if they conform with the provisions of U.S. Legal Note 5 to Chapter 91 of the Harmonized Tariff Schedule of the United States ("91/5"). 91/5 denies this benefit to articles containing any material which is the product of any country with respect to which Column 2 rates of duty apply; authorizes the Secretaries to establish the total quantity of such articles, provided that the quantity so established does not exceed 10,000,000 units or one-ninth of apparent domestic consumption, whichever is greater, and provided also that the quantity is not decreased by more than ten percent nor increased by more than twenty percent (or to more than 7,000,000 units, whichever is greater) of the quantity established in the previous year.

(b) The law directs the International Trade Commission to determine apparent domestic consumption for the preceding calendar year in the first year U.S. insular imports of watches and watch movements exceed 9,000,000 units. 91/5 authorizes the Secretaries to establish territorial shares of the overall duty-exemption within specified limits; and provides for the annual allocation of the duty-exemption among insular watch producers equitably and on the basis of allocation criteria, including minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

(c) The amended law also provides for the issuance to producers of certificates entitling the holder (or any transferee) to obtain duty refunds on watches and watch movements and parts (except discrete watchcases) imported into the customs territory of the United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. Refund requests are governed by regulations issued by the Department of the Treasury. The Secretaries are authorized to issue regulations necessary to carry out their duties under Headnote 6 and may cancel or restrict the license or certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.2 Definitions and forms.

(a) *Definitions.* Unless the context indicates otherwise:

(1) *Act* means Pub. L. 97-446, enacted January 12, 1983 (19 U.S.C. 1202), 96 Stat. 2329.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or tranfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm to which a duty-exemption has been allocated, to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means an entity which is completely separate from and unassociated with (by way of ownership or control) any duty-exempt recipient in any territory. A "*new entrant*" is a new firm which has received an allocation.

(6) *Producer* means a duty-exemption holder which has maintained its eligibility for further allocations by complying with these regulations.

(7) *Established industry* means all producers, including new entrants, that have maintained their eligibility for further allocations.

(8) *Territories, territorial, and insular possessions* refer to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

(9) *Duty-exemption* refers to the authorization of duty-free entry of a specified number of watches and watch movements into the Customs Territory of the United States.

(10) *Total annual duty-exemption* refers to the entire quantity of watches or watch components which may enter duty-free into the customs territory of the United States from the territories under 91/5 in a calendar year, as determined by the Secretaries or by the International Trade Commission in accordance with the Act.

(11) *Territorial distribution* refers to the apportionment by the Secretaries of the total annual duty-exemption among the separate territories; *territorial share* means the portion consigned to each territory by this apportionment.

(12) *Allocation* refers to the distribution of all parts of a territorial share, or a portion thereof, among the several producers in a territory.

(13) *Creditable wages* means all wages—up to an amount per person periodically established by the Secretaries—paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus any wages paid for the repair of non-91/5 watches and watch movements up to an amount equal to 25 percent of the firm's other creditable wages. Excluded however, are wages paid: (i) For special services rendered to the firm by accountants, lawyers, or other professional personnel, (ii) for the assembly of non-91/5 watches and watch movements and (iii) for the repair of non-91/5 watches and movements to the extent that such wages exceed the ratio set forth above. Wages paid to persons engaged in both creditable and non-creditable assembly and repair activities may be credited proportionately provided the firm maintains production and payroll records adequate for the Departments' verification of the creditable portion.

(14) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the U.S. Customs Service; contain any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Department has determined not to involve substantial and meaningful work in the territory (as elsewhere defined in these regulations).

(15) *Discrete movements and components* means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.)

(b) *Forms*—(1) *ITA-334P "Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States."* This form must be completed annually by all producers desiring to receive an annual allocation. It is also used, with appropriate special instructions for its completion, by new firms applying for duty-exemptions.

(2) *ITA-333 "License to Enter Watches and Watch Movements into the Customs Territory of the United States."* This form is issued by the Director to producers who have received an allocation and constitutes authorization for issuing specific shipment permits by the territorial governments. It is also used to record the balance of a producer's remaining duty-exemptions after each shipment permit is issued.

(3) *ITA-340 "Permit to Enter Watches and Watch Movements into the Customs Territory of the United States."* This form is issued by the territorial government to producers holding a valid license and authorizes duty-free entry of a specified amount of watches or watch movements at a specified U.S. Customs port.

(4) *ITA-321P "Mid-year Report on Watch Assembly Operations of Firms Granted a Duty-free Watch Allocation."* This form provides the Secretaries with data required for program evaluation and planning purposes. Each producer is required to return the completed form to the Director on or before July 15 of each calendar year.

(5) *ITA-360P "Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements."* This document authorizes an insular producer to request the refund of duties on imports of watches, watch movements and parts therefor, with certain exceptions, up to a specified value. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA-361P.

(6) *ITA-361P "Request for Refund of Duties on Watches and Watch Movements."* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA-360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party. (See § 303.12.)

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625-0040. The information collection requirements in paragraphs (b)(4) through (6) were approved under control number 0625-0134)

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.3 Determination of the total annual duty-exemption.

(a) *Procedure for determination.* If, after considering the productive capacity of the territorial watch industry and the economic interests of the territories, the Secretaries determine that the amount of the total annual duty-exemption, or the territorial shares of the total amount, should be changed, they shall publish in the FEDERAL REGISTER a proposed limit on the quantity of watch units which may enter duty-free into the customs territory of the United States and proposed territorial shares thereof and, after considering comments, establish the limit and shares by FEDERAL REGISTER notice. If the Secretaries take no action under this section, they shall make the allocations in accordance with the limit and shares last established by this procedure.

(b) *Standards for determination.* (1) Notwithstanding paragraph (b)(2) of this section, the limit established for any year may be 7,000,000 units if the limit established for the preceding year was a smaller amount.

(2) Subject to paragraph (c) of this section, the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, or increased, if the resultant total is larger than 7,000,000, by more than 20% of

the quantity established for the calendar year immediately preceding.

(3) The Secretaries shall determine the limit after considering the interests of the territories; the domestic or international trade policy objectives of the United States; the need to maintain the competitive nature of the territorial industry; the total contribution of the industry to the economic well-being of the territories; and the territorial industry's utilization of the total duty-exemption established in the preceding year.

(c) *Determinations based on consumption.* (1) The Secretaries shall notify the International Trade Commission whenever they have reason to believe duty-free watch imports from the territories will exceed 9,000,000 units, or whenever they make a preliminary determination that the total annual duty-exemption should exceed 10,000,000 units.

(2) In addition to the limitations in paragraph (b) of this section, the Secretaries shall not establish a limit exceeding one-ninth of apparent domestic consumption if such consumption, as determined by International Trade Commission, exceeds 90 million units.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985; 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.4 Determination of territorial distribution.

(a) *Procedure for determination.* The Secretaries shall determine the territorial shares concurrently with their determination of the total annual duty exemption, and in the same manner (see § 303.3, above).

(b) *Standards for determination*—(1) *Limitations.* A territorial share may not be reduced by more than 500,000 units in any calendar year. No territorial share shall be less than 500,000 units.

(2) *Criteria for setting precise quantities.* The Secretaries shall determine the precise quantities after considering, *inter alia,* the territorial capacity to produce and ship watch units. The Secretaries shall further bear in mind the aggregate benefits to the territories, such as creditable wages paid, creditable wages per unit exported, and corporate income tax payments.

(3) *Limitations on reduction of share.* The Secretaries shall not reduce a territory's share if its producers use 85% or more of the quantity distributed to that territory in the immediately preceding year, except in the case of a major increase or decrease in the number of producers in a territory or if they believe that a territorial industry will decrease production by more than 15% from the total of the preceding year.

(4) *Standby redistribution authority.* The Secretaries may redistribute territorial shares if such action is warranted by circumstances unforeseen at the time of the initial distributions, such as that a territory will use less than 80% of its total by the end of a calendar year, or if a redistribution is necessary to maintain the competitive nature of the territorial industries.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985]

§ 303.5 Application for annual allocations of duty-exemptions.

(a) Application forms (ITA-334P) shall be furnished to producers by January 1, and must be completed and returned to the Director no later than January 31, of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no allocation shall be made to producer until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including:

(1) Work sheets used to answer all questions on the application form;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company and to the satisfaction of eligibility requirements of duty-free treatment of its product by the U.S. Customs Service;

(4) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories on the basis of which a portion of each producer's annual allocation is or may be predicated;

(5) Customs, bank, payroll, and production records;

(6) Records on purchases of components and sales of movements, including proof of payment; and

(7) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's 91/5 watch assembly operation.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application before allocations must be calculated, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b), above, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.6 Allocation and reallocation of exemptions among producers.

(a) *Interim allocations.* As soon as practicable after January 1 of each year the Secretaries shall make an interim allocation to each producer equaling 70% of the number of watch units it has entered duty-free into the customs territory of the United States during the first eight months of the preceding calendar year, or any lesser amount requested in writing by the producer. The Secretaries may also issue a lesser amount if, in their judgment, the producer might otherwise receive an interim allocation in an amount greater than the producer's probable annual allocation. In calculating the interim allocations, the Director shall count only duty-free watches and watch movements verified by the U.S. Customs Service as having been entered on or before August 31 of the preceding year. Interim allocations shall not be published.

(b) *Annual allocations.* (1) By March 1 of each year the Secretaries shall make annual allocations to the producers in accordance with the allocation formula based on data supplied in their annual application (Form ITA-334P) and verified by the Secretaries.

(2) The excess of a producer's duty-exemption earned under the allocation criteria over the amount formally requested by the producer shall be considered to have been relinquished voluntarily (see paragraph (f) below). A producer's request may be modified by written communication received by the Secretaries by February 28, or, at the discretion of the Secretaries, before the annual allocations are made. An allocation notice shall be published in the FEDERAL REGISTER.

(c) *Supplemental allocations.* At the request of a producer, the Secretaries may supplement a producer's interim allocation if the Secretaries determine the producer's interim allocation will be used before the Secretaries can issue the annual allocation. Allocations to supplement a producer's annual allocation shall be made under the reallocation provisions prescribed below.

(d) *Allocations to new entrants.* In making interim and annual allocations to producers selected the preceding year as new entrants, the Secretaries shall take into account that such producers will not have had a full year's operation as a basis for computation of its duty-exemption. The Secretaries may make an interim or annual allocation to a new entrant even if the firm did not operate during the preceding calendar year.

(e) *Special allocations.* A producer may request a special allocation if unusual circumstances kept it from making duty-free shipments at a level comparable with its past record. In considering such requests, the Secretaries shall take into account the firm's proposed assembly operations; its record in contributing to the territorial economy; and its intentions and capacity to make meaningful contributions to the territory. They shall also first determine that the amount of the special allocation requested will not significantly affect the amounts allocated to other producers pursuant to § 303.6(b)(1).

(f) *Reallocations.* Duty-exemptions may become available for reallocation as a result of cancellation or reduction for cause, voluntary relinquishment or nonplacement of duty-exemption set aside for new entrants. The Secretaries may reallocate such duty-exemptions among the remaining producers who can use additional quantities in a manner judged best for the economy of the territories. The Secretaries shall consider such factors as the wage and income tax contributions of the respective producers during the preceding year and the nature of the producer's present assembly operations. In addition, the Secretaries may consider other factors which, in their judgment, are relevant to determining that applications from new firms, in lieu of reallocations, should be invited for part or all of unused portions of the total duty exemptions. Such factors may include:

(1) The ability of the established industry to use the duty-exemption;

(2) Whether the duty-exemption is sufficient to support new entrant operations;

(3) The impact upon the established industry if new entrants are selected, particularly with respect to the effect on local employment, tax contributions to the territorial government, and the ability of the established industry to maintain satisfactory production levels; and

(4) Whether additional new entrants offer the best prospect for adding economic benefits to the territory.

After considering these factors, the Secretaries may set aside all or a portion of the allocation available for reallocation and invite applications from new entrants by publishing a notice in the FEDERAL REGISTER. If the Secretaries determine that inviting applications from new firms would be in the best interest of the territory, they shall set forth their reasons for doing so and describe the information new firms will be required to submit in applying for an allocation, including but not limited to the applicant's financial capacity, production and marketing experience, proposed source of parts and components, affiliation with other business entities in the watchmaking and watchmarketing industry, proposed degree of assembly, proposed wage rates by job classification, and the applicant's intentions with regard to the number of units to be assembled and shipped duty-free into the customs territory, establishing or acquiring a local production facility, and seeking territorial tax exemptions or other local industrial incentive benefits.

(g) Section 303.14 of this part contains the criteria and formulae used by the Secretaries in calculating each watch producer's annual watch duty-exemption allocation, and other special rules or provisions the Secretaries may periodically adopt to carry out their responsibilities in a timely manner while taking into account changing circumstances. References to duty-exemptions, unless otherwise indicated, are to the amount available for reallocation in the current calendar year. Specifications of or references to data or bases used in the calculation of current year allocations (e.g., economic contributions and shipments) are, unless indicated otherwise, those which were generated in the previous year.

(h) The Secretaries may propose changes to § 303.14 at any time they consider it necessary to fulfill their responsibilities. Normally, such changes will be proposed towards the end of each calendar year. Interested parties shall be given an opportunity to submit written comments on proposed changes.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§ 303.7 Issuance of licenses and shipment permits.

(a) *Issuance of Licenses (ITA-333).* (1) Concurrently with annual allocations under § 303.5 the Director shall issue a non-transferable license (Form ITA-333) to each producer. The Director shall also issue a replacement license if a producer's allocation is reduced pursuant to § 303.6.

(2) Annual duty-exemption licenses shall be for only that portion of a producer's annual duty-exemption not previously licensed.

(3) If a producer's duty-exemption has been reduced, the Director shall not issue a replacement license for the reduced amount until the producer's previous license has been received for cancellation by the Director.

(4) A producer's license shall be used in their entirety, except when they

expire or are cancelled, in order of their date of issuance, i.e., an interim license must be completely used before shipment permits can be issued against an interim supplemental license.

(5) Outstanding licenses issued by the Director automatically expire at midnight, December 31, of each calendar year. No unused allocation of duty-exemption may be carried over into the subsequent calendar year.

(6) The Director shall ensure that all licenses issued are conspicuously marked to show the type of license issued, the identity of the producer, and the year for which the license is valid. All licenses shall bear the signature of the Director.

(7) Each producer is responsible for the security of its licenses. The loss of a license shall be reported immediately to the Director. Defacing, tampering with, and unauthorized use of a license are forbidden.

(b) *Issuance of shipment permits (ITA-340).* (1) The Governors of the respective territories are authorized to issue shipment permits against producers' duty-exemption licenses. The Governors may delegate this authority to responsible government officials by providing the name, official title and sample signature of the designated official(s) to the Director. Such delegations of authority shall become effective upon their receipt by the Director unless the Director, on behalf of the Secretaries, withholds concurrence with a written statement of the reasons therefor.

(2) Each permit must specify the number of watches and watch movements included in the shipment, the unused balance remaining on the producer's license, and pertinent shipping information.

(3) Except when commercial hardship may result, producers shall request a shipment permit for each separate shipment or consignment.

(4) Shipment permits shall be valid in the calendar year in which issued. To accomplish duty-free entry, the importer of record or his broker must present the merchandise and the original Form ITA-340 and other required documents to the District Director of Customs at the port of entry by midnight, December 31, of the year in which the shipment permit is issued.

(5) If a shipment permit expires before the shipment can be presented to Customs officials due to transportation delays, carrier mishandling or other circumstances beyond the control of the shipper, the shipment may be entered duty-free upon presentation of a new shipment permit issued against a currently valid license, provided there is compliance with all Customs regulations and procedures. In such cases the expired shipment permit must be forwarded to the Director with a letter explaining the pertinent circumstances. Such entries shall be counted as a shipment in the year of entry for purposes of calculating the producer's annual allocation the following year.

(6) For purposes of calculating calendar year allocations, any watches or watch movements shipped by a producer for duty-free entry into the customs territory of the United States and lost prior to entry into the customs territory of the United States shall, nevertheless, be considered as having been entered into the customs territory during the year in which they were shipped, provided the Secretaries are satisfied that shipment occurred but was lost before entering the Customs territory. If the producer is able to assemble and ship a replacement shipment before the end of the calendar year, the Director will, upon written request of the producer, direct the issuing officer in the territory to issue a replacement permit without charging the producer's license. In such cases, credit for the purpose of calculating allocations will be accorded the replacement shipment but not the lost shipment.

(7) If a shipment permit has been issued and not used, the holder of the license shall notify the office which issued the shipment permit and present the permit for cancellation. The issuing office shall correct the balance shown on the producer's license and notify the Director of the action taken. If a shipment permit is lost, the shipper shall immediately notify both the issuing office and the Director.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§ 303.8 Maintenance of duty-exemption entitlements.

(a) The Secretaries may order a producer to show cause within 30 days of receipt of the order why the duty-exemption to which the firm would otherwise be entitled should not be cancelled, in whole or in part, if:

(1) At any time after June 30 of the calendar year:

(i) A producer's assembly and shipment record provides a reasonable basis to conclude that the producer will use less than 80 percent of its total allocation by the end of the calendar year, *and*

(ii) The producer refuses a request from the Departments to relinquish that portion of its allocation which they conclude will not be used; *or*

(2) A producer fails to satisfy or fulfill any term, condition or representation, whether undertaken by itself or prescribed by the Departments, upon which receipt of allocation has been predicated or upon which the Departments have relied in connection with the sale or transfer of a business together with its allocation; *or*

(3) A producer, in the judgment of the Secretaries, has failed to make a meaningful contribution to the territory for a period of two or more consecutive calendar years, when compared with the performance of the duty-free watch assembly industry in the territory as a whole. This comparison shall include the producer's quantitative use of its allocations, amount of direct labor employed in the assembly of watches and watch movements, and the net amount of corporate income taxes paid to the government of the territory. If the producer fails to satisfy the Secretaries as to why such action should not be taken, the firm's allocation shall be reduced or cancelled, whichever is appropriate under the show-cause order. The eligibility of a firm whose allocation has been cancelled to receive further allocations may also be terminated.

(b) The Secretaries may also issue a show-cause order to reduce or cancel a producer's allocation or production incentive certificate (see § 303.12, below), as appropriate, or to declare the producer ineligible to receive an allocation or certificate if it violates any regulation in this part, uses a form, license, permit, or certificate in an unauthorized manner, or fails to provide information or data required by these regulations or requested by the Secretaries or their delegates in the performance of their responsibilities.

(c) If a firm's allocation is reduced or cancelled, or if a firm voluntarily relinquishes a part of its allocation, the Secretaries may:

(1) Reallocate the allocation involved among the remaining producers in a manner best suited to contribute to the economy of the territory;

(2) Invite applications from new firms in accordance with § 303.6(f); or

(3) Do neither of the above if deemed in the best interest of the territories and the established industry.

§ 303.9 Restrictions on the transfer of duty-exemptions.

(a) The sale or transfer of a duty-exemption from one firm to another shall not be permitted.

(b) The sale or transfer of a business together with its duty-exemption shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) If the transferee is a subsidiary of or in any way affiliated with any other company engaged in the production of watch movements components being offered for sale to any territorial producer, the related company or companies will continue to offer such watch and watch movement components on equal terms and conditions to all willing buyers and shall not engage in any practice, in regard to the sale of components, that competitively disadvantages the non-affiliated territorial producers *vis-a-vis* the territorial subsidiary;

(2) The sale or transfer price for the business together with its duty-exemption does not include the capitalization of the duty-exemption *per se;*

(3) The transferee is neither directly or indirectly affiliated with any other

territorial duty-exemption holder in any territory;

(4) The transferee will not modify the watch assembly operations of the duty-exemption firm in a manner that will significantly diminish its economic contributions to the territory.

(c) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (b) of this section have been or are being met.

(d) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (b) of this section shall secure the Departments' approval in advance of the sale or transfer of the business together with its duty-exemption. The request for approval shall specify which of the certifications specified in paragraph (b) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§ 303.10 Limitations, requirements, restrictions, and prohibitions.

(a) *Limitation on value of components.* (1) Watch movements and watches assembled from components with a value of more than the maximum values set forth, respectively, in § 303.14(b)(3) shall not be eligible for duty-exemptions into the U.S. Customs territory.

(2) As used in subsection (a) "value" means the value of the merchandise plus all charges and costs incurred up to the last point of shipment (i.e., prior to entry of the parts and components into the territory).

(b) *Minimum assembly requirements.* No insular watch or watch component may be entered free of duty into the customs territory of the United States unless it meets the requirements of this paragraph.

(1) Conventional watch movements must be assembled from no fewer than a certain number of discrete parts and components and conventional watches from no fewer than another number, both designated in § 303.14(b)(1).

(2) Quartz analog movements and watches must be assembled as prescribed in § 303.14(b)(2).

(3) The disassembly of components or movements following their manufacture or assembly, whether in the country of origin, in the territory, or in an in-transit site, shall constitute a violation of the requirements of this paragraph.

(c) *Minimum labor input criteria.* (1) No insular watch or watch component may be entered free of duty into the customs territory of the United States unless it meets the requirements of this paragraph.

(2) Firms assembling watches or watch components shall make wage payments in the territory averaging not less than the amounts set forth in § 303.14(b)(4), respectively, per watch and watch movement assembled and shipped into the customs area of the United States. In applying this criterion, the Departments may make appropriate data adjustments to take into account wages paid for units assembled during the calendar year prior to the year of the allocation.

(d) *Prohibition of preferential supply relationships.* (1) With the exceptions shown below, no producer shall accept from any watch parts and components supplier advantages and preferences which might result in a more favorable competitive position for itself *vis-a-vis* other territorial producers relying on the same supplier. This prohibition shall apply whether or not the supplier is affiliated with a territorial producer.

(2) A producer may accept a price differential provided it is based solely on volume considerations usual and customary in the trade and provided the supplier's prices for the line and model in question reflect such volume-based differentials and have previously been published in a manner which could reasonably be considered to have made them easily accessible to any other territorial producer.

(3) A producer may purchase parts and components from a supplier on credit extended by the supplier, even though the supplier may not be willing to extend similar credit to all

other territorial producers, provided that the denial of such credit is impartially based on the purchaser's credit history.

(4) *Limited production runs.* (i) Any territorial producer which is affiliated with a supplier shall attach the following clause to each purchase order (excepting purchase orders described in (iv), below) to that supplier:

> In the event this order is for parts and components which are in short supply in your inventory, whether because of sales from a production run of a line or model for which no further production run is scheduled or because these parts and components were produced in a limited run, my firm is prohibited by regulation from placing an order for such line or model if filling it would deplete its inventory by more than 50%. Accordingly, we expressly exclude from this purchase order any portion of the total quantity exceeding this fraction of your inventory and request that you confirm your acceptance of such excess only after 90 days have elapsed after your acceptance of the allowable portion. We understand that your receipt of an order for such merchandise from another territorial producer within that 90-day period will receive precedence over our order.

(ii) If, in compliance with the clause shown in (i), above, a watch parts and components supplier does not accept a purchase order, the affiliated producer shall immediately report to the Departments in writing:

(A) The total amount (in equivalent units) of its purchase order;

(B) The line and model ordered;

(C) The date the supplier accepted the order for the allowable portion; and

(D) What amount of the order was not accepted.

(iii) Each territorial producer unable to receive confirmation for the entire amount of any purchase order it places with a supplier known to be affiliated with another territorial producer shall immediately report to the Departments in writing:

(A) The total amount (in equivalent units) of its purchase order;

(B) The line and model ordered;

(C) The date it placed the order; and

(D) What portion of the amount it ordered was not confirmed.

(iv) These provisions do not apply to purchase orders by an affiliated territorial producer for the same line or model from the same supplier which are made more than 120 days following the supplier's partial acceptance of such an order in compliance with the affiliated territorial producer's request.

(5) *Introduction of new lines and models.* (i) If a territorial producer is affiliated with a supplier planning to introduce a new line or model, the territorial producer may (subject to the restrictions governing limited production runs, above) order, assemble, ship, and market the line or model without restriction during a period 60 days before and 60 days after the public introduction of the line or model.

(ii) Thereafter, the affiliated territorial producer shall treat the new line or model as any other established line or model subject to all the restrictions and prohibitions of this paragraph.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§ 303.11 Mid-year reporting requirement.

(a) Each producer is required to file a report (Form ITA-321P) on July 15 of each year covering the period January 1 to June 30. Copies of Form ITA-321P will be forwarded by the Director to each producer at the territorial address of record at least 30 days prior to the required reporting date. The Form ITA-321P must be returned to the Director by registered mail.

(b) In addition to providing the Director with specific information on the producer's watch movement assembly operations during the reporting period and projected operations for the remainder of the calendar year, Form ITA-321P is also used to report changes in ownership, interest and control occurring during the reporting period. (See also § 303.9 regarding restrictions on the transfer of duty-exemptions.)

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) Certificates of Entitlement, Form ITA-360, shall be issued before March 1 of the current year.

(2) Certificates shall not be issued to more than one company in the territo-

ries owned or controlled by the same corporate entity.

(b) *Securities and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the insular producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered mail to the Departments when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing a Form ITA-361P (see § 303.2(b)(6) and the instructions on the form). After authentication by the Department of Commerce, the Form ITA-361P may be used to obtain duty refunds on watch movements, watches, and parts therefor. Duties on watchcases not containing a movement and on articles containing any material which is the product of a country with respect to which Column 2 rates of duty apply may not be refunded. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the U.S. Customs Service, U.S. Department of the Treasury, govern the refund of duties under Pub. L. 97-446. If the Departments receive information from the Customs Service that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

(3) The insular producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA-361P the name and address of the party.

(4) After a Form ITA-361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) above).

(5) All disputes concerning the use of an authenticated Form ITA-361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA-361P shall be considered an "interested party" within the meaning of § 303.13 of this part.

(d) *Calculation of value.* (1) The Departments shall verify total creditable wages paid by each producer during the calendar year and divide by the total units its shipped during the calendar year to derive its average creditable wage per unit shipped (APS). The Departments may make adjustments for these data in the manner set forth in § 303.10(c)(2).

(2) The value of each producer's certificate shall equal the producer's APS multiplied by a figure based on the number of units shipped, as determined by the Secretaries in accordance with § 303.14(c).

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, D.C. 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy of fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision which shall be final, to the petitioner by registered mail.

(e) If the outcome of any petition materially affects the amount of the petitioner's allocation and if the Secretaries' consideration of the petition continues during the calculation of the annual allocations, the Secretaries shall set aside a portion of the affected territorial share in an amount which, in their judgment, protects the petitioner's interest and shall allocate the remainder among the other producers.

§ 303.14 Allocation factors and miscellaneous provisions.

(a) *The allocation formula.* (1) Except as provided in (a)(2) of this section, the territorial shares (excluding any amount set aside for possible new entrants) shall be allocated among the several producers in each territory in accordance with the following formula:

(i) Fifty percent of the territorial share shall be allocated on the basis of the net dollar amount of economic contributions to the territory consisting of the dollar amount of wages, up to a maximum of $32,000 per person, paid by each producer to territorial residents and attributable to each producer's 91/5 watch and watch movement assembly operations, *plus* the dollar amount of income taxes attributable to its 91/5 watch and watch movement assembly operations (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

(ii) Fifty percent of the territorial share shall be allocated on the basis of the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into the customs territory of the United States.

(2) If there is only one producer in a territory, the entire territorial share, excluding any amount set aside for possible new entrants, may be allocated without recourse to any distributive formula.

(b) *Minimum assembly and wage contribution requirements.* (1) The minimum number of discrete parts and components, referred to in § 303.10(b)(2), for conventional watch movements is 30 and the conventional watches 33.

(2) Quartz analog watch movements must be assembled from parts knocked down to the maximum degree possible for the technical capabilities of the insular industry as a whole. The greatest degree of disassembly specified, for each manufacturer's brand and model, by any producer in any territory pur-

chasing such brands and models shall constitute the disassembly required as a minimum for the industry as a whole. In no event, however, shall a quartz analog kit qualify for duty-free treatment if it does not permit complete assembly in the territory of the setting mechanism and train assemblies.

(3) The maximum value of components referred to in § 303.10(a)(1) shall be $35 for watch movements and $150 for watches.

(4) The average wage payments referred to in § 303.10(c)(2) are $0.75 for watch movements and $0.95 for watches.

(c) *Calculation of the value of production incentive certificates.* The value of each producer's cerificate shall equal the producer's average creditable wages per unit shipped (APS) multiplied by the sum of:

(1) The number of units shipped up to 300,000 units times a factor of 90%; plus

(2) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(3) Incremental units shipped up to 600,000 times a factor of 80%; plus

(4) Incremental shipments up to 750,000 units times a factor of 65%.

(d) *New entrant invitations.* (1) Applications from new firms are invited for the territorial shares of American Samoa and the Northern Mariana Islands.

(2) Applications for new firms are invited for 200,000 units of the Guam territorial share.

(3) Applications from new firms are invited for 200,000 units of the Virgin Islands territorial share.

(e) *Territorial shares.* The shares of the total duty exemption are 4,700,000 for the Virgin Islands, 1,000,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 17825, May 19, 1988; 53 FR 52679, Dec. 29, 1988; 53 FR 52994, Dec. 30, 1988]

PART 310—OFFICIAL U.S. GOVERNMENT RECOGNITION OF AND PARTICIPATION IN INTERNATIONAL EXPOSITIONS HELD IN THE UNITED STATES

Sec.
310.1 Background and purpose.
310.2 Definitions.
310.3 Applications for Federal recognition.
310.4 Action on application.
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310.6 Recognition by the President.
310.7 Statement for Federal participation.
310.8 Proposed plan for Federal participation.
310.9 Report of the Secretary on Federal participation.

AUTHORITY: Pub. L. 91-269, 84 Stat. 271 (22 U.S.C. 2801 *et seq.*).

SOURCE: 40 FR 34107, Aug. 14, 1975, unless otherwise noted. Redesignated at 46 FR 57457, Nov. 24, 1981.

EDITORIAL NOTE: Nomenclature changes to Part 310 appear at 46 FR 57457, Nov. 24, 1981.

§ 310.1 Background and purpose.

The regulations in this part are issued under the authority of Pub. L. 91-269 (84 Stat. 271, 22 U.S.C. 2801 et seq.) which establishes an orderly procedure for Federal Government recognition of, and participation in, international expositions to be held in the United States. The Act provides, inter alia, that Federal recognition of an exposition is to be granted upon a finding by the President that such recognition will be in the national interest. In making this finding, the President is directed to consider, among other factors, a report from the Secretary of Commerce as to the purposes and reasons for an exposition and the extent of financial and other support to be provided by the State and local officials and business and community leaders where the exposition is to be held, and a report by the Secretary of State to determine whether the exposition is qualified for registration under Bureau of International Expositions (BIE) rules. The BIE is an international organization established by the Paris Convention of 1928 (T.I.A.S. 6548 as amended by T.I.A.S. 6549) to regulate the conduct and scheduling of international expositions in which foreign nations are officially invited to participate. The BIE divides international expositions into different categories and types and requires each member nation to observe specified minimum time intervals in scheduling each of these categories and types of expositions.[1] Under BIE rules, member nations may not ordinarily participate in an international exposition unless such exposition has been approved by the BIE. The United States became a member of the BIE on April 30, 1968, upon ratification of the Paris Convention by the U.S. Senate (114 Cong. Rec. 11012).

Federal participation in a recognized international exposition requires a specific authorization by the Congress, upon a finding by the President that such participation would be in the national interest. The Act provides for the transmission to Congress of a participation proposal by the President. This proposal transmits to the Congress information regarding the exposition, including a statement that it has been registered by the BIE and a plan for Federal participation prepared by the Secretary of Commerce in cooperation with other interested Federal departments and agencies.

§ 310.2 Definitions.

For the purpose of this part, except where the context requires otherwise:

(a) "Act" means Pub. L. 91-269.

(b) "Secretary" means the Secretary of Commerce.

(c) "Commissioner General" means the person appointed to act as the senior Federal official for the exposition as required by BIE rules and regulations.

(d) "Director" means the Director of the International Expositions Staff, Office of the Deputy Assistant Secretary for Export Development, International Trade Administration, Department of Commerce.

(e) "Applicant" means a State, County, municipality, a political subdivision of the foregoing, private nonprofit or not-for-profit organizations, or individuals filing an application with the Director seeking Federal recognition of an international exposition to be held in the United States.

(f) "State" means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(g) "Exposition" means an international exposition proposed to be held in the United States for which an application has been filed with the Director seeking Federal recognition under the Act; which proposes to invite more than one foreign country to participate; and, which would exceed three weeks in duration. Any event under three weeks in duration is not considered an international exposition under BIE rules.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

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[1] The BIE defines a General Exposition of the First Category as an exposition dealing with progress achieved in a particular field applying to several branches of human activity at which the invited countries are obligated to construct national pavilions. A General Exposition of the Secondary Category is a similar exposition at which invited countries are not authorized to construct national pavilions, but occupy space provided by the exposition sponsors. Special Category Expositions are those dealing only with one particular technique, raw material, or basic need.

The BIE frequency rules require that an interval of 15 years must elapse between General Expositions of the First Category held in one country. General Expositions of the Second Category require an interval of 10 years. An interval of 5 years must ordinarily elapse between Special Category Expositions of the same kind in one country or three months between Special Category Expositions of different kinds. These frequency intervals are computed from the date of the opening of the exposition.

More detailed BIE classification criteria and regulations are contained in the Paris Convention of 1928, as amended in 1948 and 1966. Applicants not having a copy of the text of this convention may obtain one by writing the Director. (The Convention may soon be amended by a Protocol which has been approved by the BIE and ratified by the United States. This amendment would increase authorized frequencies or intervals for BIE approved expositions.)

§ 310.3 Applications for Federal recognition.

(a) Applications for Federal recognition of an exposition shall be filed with, and all official communications in connection therewith addressed to, the International Expositions Staff, International Trade Administration, Department of Commerce, Washington, DC 20230.

(b) Every application, exhibit, or enclosure, except where specifically waived by the Director, shall be in quadruplicate, duly authenticated and referenced.

(c) Every application shall be in letter form and shall contain the date, address, and official designation of the applicant and shall be signed by an authorized officer or individual.

(d) Every application, except where specifically waived by the Director, shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A study setting forth in detail the purpose for the exposition, including any historical, geographic, or other significant event of the host city, State, or region related to the exposition.

2. *Exhibit No. 2.* An exposition plan setting forth in detail (i) the theme of the exposition and the "storyline" around which the entire exposition is to be developed; (ii) whatever preliminary architectural and design plans are available on the physical layout of the site plus existing and projected structures; (iii) the type of participation proposed in the exposition (e.g., foreign and domestic exhibits); (iv) cultural, sports, and special events planned; (v) the proposed BIE category of the event and evidence of its conformity to the regulations of the BIE (a copy of these regulations can be obtained from the Director upon request); (vi) the proposed steps that will be taken to protect foreign exhibitors under the BIE model rules and regulations and (vii) in writing commit its organization to the completion of the exposition.

3. *Exhibit No. 3.* Documentary evidence of State, regional and local support (e.g., letters to the applicant from business and civic leadership of the region, pledging assistance and/or financing; State and/or municipal resolutions, acts, or appropriations; referendums on bond issues, and others).

4. *Exhibit No. 4.* An organization chart of the exposition management structure (actual or proposed) of the applicant, including description of the functions, duties and responsibilities of each official position along with bibliographic material, including any professional experience in the fields of architecture, industrial design, engineering, labor relations, concession management, interpretative theme planning, exhibit development, etc., on principal officers, if available. (The principal officials should also be prepared to submit subsequent individual statements under oath of their respective financial holdings and other interests.)

5. *Exhibit No. 5.* A statement setting forth in detail (i) the availability of visitor services in existence or projected to accommodate tourists at the exposition (e.g., number of hotel and motel units, number and type of restaurants, health facilities, etc.); (ii) evidence of adequate transportation facilities and accessibility of the host city to large groups of national and international visitors (e.g., number and schedule of airlines, bus lines, railroads, and truck lines serving the host city); and (iii) plans to promote the exposition as a major national and international tourist destination.

6. *Exhibit No. 6.* A statement setting forth in detail the applicant's plans for acquiring title to, or the right to occupy and use real property, other than that owned by the applicant or by the United States, essential for implementing the project or projects covered by the application. If the applicant, at the time of filing the application, has acquired title to the real property, he should submit a certified copy of the deed(s). If the applicant, at the time of filing the application, has by easement, lease, franchise, or otherwise acquired the right to occupy and use real property owned by others, he should submit a certified copy of the appropriate legal instrument(s) evidencing this right.

7. *Exhibit No. 7.* A statement of the latest prevailing hourly wage rates for construction workers in the host city (e.g., carpenters, cement masons, sheet metal workers, etc.).

8. *Exhibit No. 8.* Information on attitudes of labor leaders as to "no strike" agreements during the development and operation of the exposition. Actual "no strike" pledges are desirable.

9. *Exhibit No. 9.* A detailed study conducted and certified by a nationally recognized firm(s) in the field of economics, accounting, management, etc., setting forth (i) proposed capital investment cost; cash flow projections; and sources of financing available to meet these costs, including but not limited to funds from State and municipal financing, general obligation and/or general revenue bond issues, and other public or private sources of front-end capital; (ii) assurances that the "guaranteed financing" is or will be available in accordance with Section 2(a)(1)(b) of Pub. L. 91-269; (iii) the projected expenses for managing the exposition; (iv) projected operational revenues broken down to include admissions, space rental,

concessions, service fees and miscellaneous income; and (v) cost-benefit projections. These should be accompanied by a statement of the firm that the needed cash flow, sources of funding, and revenue projections are realistic and attainable.

10. *Exhibit No. 10.* A description of the exposition implementation time schedule and the management control system to be utilized to implement the time schedule (e.g., PERT, CPM, etc.).

11. *Exhibit No. 11.* A statement setting forth in detail the public relations, publicity and other promotional plans of the applicant. For example, the statement could include: (i) an outline of the public relations/publicity program broken down by percentage allocations among the various media; (ii) a public relations/publicity program budget with the various calendar target dates for completion of phases prior to the opening, the opening and post-opening of the exposition; and (iii) protocol plans for U.S. and foreign dignitaries, as well as for special ceremonies and events and how these plans are to be financed.

12. *Exhibit No. 12.* A study setting forth in detail the benefits to be derived from the exposition and residual use plans. For example, the study might include: (i) extent of immediate economic benefits for the city/region/nation in proportion to total investment in the exposition; (ii) extent of long range economic benefits for the city/region/nation in proportion to total investment in the exposition; and (iii) extent of intangible (social, psychological, "good will") benefits accruing to the city/region/nation including the solution or amelioration of any national/local problems.

13. *Exhibit No. 13.* A statement committing the applicant to develop and complete an environmental impact statement which complies with section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4331). Sample copies of environmental impact statements may be obtained from the Director. Prior to the Director's submitting a report to the Secretary containing his findings on the application for Federal recognition pursuant to § 310.4, the applicant must have completed the required Environmental Impact Statement (EIS), in a form acceptable to the Department of Commerce.

14. *Exhibit No. 14.* A detailed set of general and special rules and regulations governing the exposition and participation in it, which, if Federal recognition is obtained, can be used by the Federal Government in seeking BIE registration.

15. *Exhibit No. 15.* A statement from the applicant agreeing to accept a U.S. Commissioner General, appointed by the President. He will be recognized as the senior Federal official and titular head of the exposition, final arbiter in disputes with exhibitors, and the official contact with foreign governments. The applicant should also agree to furnish the Commissioner General and his staff with suitable facilities in the host community during the development and operation of the exposition.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

§ 310.4 Action on application.

(a) Upon receipt of an application, the Director will analyze the application and all accompanying exhibits to insure compliance with the provisions of § 310.3 and report his findings with respect thereto to the Secretary.

(b) If more than one applicant applies for Federal recognition for expositions to be held within three years or less of each other, the applications will be reviewed concurrently by the Director. The following standards will be considered in determining which if any of the competing applicants will be recommended for Federal recognition:

(1) The order of receipt of the applications by the Director, complete with all exhibits required by § 310.3.

(2) The financial plans of the applications. Primary consideration will be given to those applications which do not require Federal financing for exposition development. This does not extend to funding for a Federal pavilion, if one is desired.

(3) The relative merit of the applications in terms of their qualifications as tourism destination sites, both with respect to existing facilities and those facilities planned for the proposed exposition. If necessary, to assist in making this determination, the Director will appoint a panel of travel industry experts representing tour developers, the transportation, entertainment and hotel/motel industries for the purpose of studying the competing applications and reporting to the Director its views as to which proposed site best meets the above criteria. If such a panel is deemed necessary, the provisions of the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I) will be applicable.

(c) In analyzing the applications, the Director may hold public hearings with the objective of clarifying issues that might be raised by the application. If desired, the Director may utilize the services of an examiner.

(d) If the Director, in his discretion, decides to hold a public hearing, notice of such hearing shall be published in the FEDERAL REGISTER, and a copy of the notice shall be furnished to local newspapers. The notice shall state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place.

(e) The following general procedure shall govern the conduct of public hearings: (1) Stenographic minutes of the proceedings shall be made; (2) the names and addresses of all parties present or represented at the hearing shall be recorded; and (3) the Director or Examiner shall read aloud for the record and for the benefit of the public such parts of the Act and of these regulations as bear on the application. He shall also read aloud for the record and for the benefit of the public such other important papers, or extracts therefrom, as may be necessary for a full understanding of the issues which require clarification. The Director or Examiner shall impress upon the parties in attendance at the public hearing, and shall specifically state at the commencement of the hearing, that the hearing is not adversary in nature and that the sole objective thereof is to clarify issues that might have been raised by the application.

(f) Statements of interested parties may be presented orally at the hearing, or submitted in writing for the record.

(g) Within six months after receipt of a fully completed application and/or the adjournment of the public hearing, the Director shall submit his report containing his findings on the application to the Secretary.

§ 310.5 Report of the Secretary on Federal recognition.

If the Director's report recommends Federal recognition, the Secretary, within a reasonable time, shall submit a report to the President.

(a) The Secretary's report shall include: (1) An evaluation of the purposes and reasons for the exposition; and (2) a determination as to whether guaranteed financial and other support has been secured by the exposition from affected State and local governments and from business and civic leaders of the region and others in amounts sufficient to assure the successful development and progress of the exposition.

(b) Based on information from, and coordination with the Department of Commerce the Secretary of State shall also file a report with the President that the exposition qualifies for recognition by the BIE.

§ 310.6 Recognition by the President.

If the President concurs in the favorable reports from the Secretaries of State and Commerce, he may grant Federal recognition to the exposition by indicating his concurrence to the two Secretaries and authorizing them to seek BIE registration.

§ 310.7 Statement for Federal participation.

If Federal participation in the exposition, as well as Federal recognition thereof is desired, the applicant shall in a statement to the Director outline the nature of the Federal participation envisioned, including whether construction of a Federal pavilion is contemplated. (It should be noted, however, that before Federal participation can be authorized by the Congress under the Act, the exposition must have (i) met the criteria for Federal recognition and be so recognized, and (ii) been registered by the BIE. Although applicants need not submit such a statement until these prerequisites are satisfied, they are encouraged to do so.) Where the desired Federal participation includes a request for construction of a Federal pavilion, the statement shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A survey drawing of the proposed Federal pavilion site, showing its areas and boundaries, its grade elevations, and surface and subsoil conditions.

2. *Exhibit No. 2.* Evidence of resolutions, statutes, opinions, etc., as to the applicant's ability to convey by deed the real property comprising the proposed Federal pavilion site in fee-simple and free of liens and encumbrances to the Federal Government. The only consideration on the part of the

Government for the conveyance of the property shall be the Government's commitment to participate in the exposition.

3. *Exhibit No. 3.* A certified copy of the building code which would be applicable should a pavilion be constructed.

4. *Exhibit No. 4.* An engineering drawing showing the accessibility of the proposed pavilion site to utilities (e.g., sewerage, water, gas, electricity, etc.).

5. *Exhibit No. 5.* A statement setting forth the security and maintenance and arrangements which the applicant would undertake (and an estimate of their cost) while a pavilion is under construction.

6. *Exhibit No. 6.* A study pursuant to Executive Order 11296 of August 10, 1966, entitled "Evaluation of flood hazard in locating Federally owned or financed buildings, roads and other facilities and in disposing of Federal land and properties."

§ 310.8 Proposed plan for Federal participation.

(a) Upon receipt of the statement, and the exhibits referred to in § 310.7, the Director shall prepare a proposed plan in cooperation with other interested departments and agencies of the Federal Government for Federal participation in the exposition.

(b) In preparing the proposed plan for Federal participation in the exposition, the Director shall conduct a feasibility study of Federal participation including cost estimates by utilizing the services within the Federal Government, professional consultants and private sources as required and in accordance with applicable laws and regulations.

(c) The Director, in the proposed plan for Federal participation in the exposition, shall determine whether or not a Federal pavilion should be constructed and, if so, whether or not the Government would have need for a permanent structure in the area of the exposition or whether a temporary structure would be more appropriate.

(d) The Director shall seek the advice of the Administrator of the General Services Administration to the extent necessary in carrying out the proposed plan for Federal participation in the exposition.

(e) Upon completion of the proposed plan for Federal participation in the exposition, the Director shall submit the plan to the Secretary.

§ 310.9 Report of the Secretary on Federal participation.

Upon receipt of the Director's proposed plan for Federal participation, the Secretary, within a reasonable time, shall submit a report to the President including: (a) Evidence that the exposition has met the criteria for Federal recognition and has been so recognized; (b) a statement that the exposition has been registered by the BIE; and (c) a proposed plan for the Federal participation referred to in § 310.8.

PART 315—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Sec.
315.1 Scope and purpose.
315.2 Definitions.
315.3 Application.
315.4 Determination by the Under Secretary.
315.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

AUTHORITY: Headnote 2, subpart B, part 6, schedule 6, Tariff Schedules of the United States (19 U.S.C. 1202); sec. 501(2) of Title V, Automotive Products Trade Act of 1965 (19 U.S.C. 2031).

SOURCE: 45 FR 42214, June 23, 1980. Redesignated at 53 FR 52115, Dec. 27, 1988, unless otherwise noted.

§ 315.1 Scope and purpose.

The purpose of this part is to set forth regulations implementing headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States as proclaimed by Proclamation No. 3682 of October 21, 1965 (3 CFR 140-65 Comp.). issued pursuant to the Automotive Products Trade Act of 1965 (19 U.S.C. 2031), by establishing a procedure under which a person may apply to be determined a bona fide motor-vehicle manufacturer. Under headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States, whenever the Secretary of Commerce has determined a person to be a bona fide motor-vehicle manufacturer, such person is eligible to obtain duty-free importation of certain Canadian articles and to issue certain orders, contracts, or letters of intent under or pursuant to which other persons, not themselves bona fide motor-vehicle manufacturers, may obtain duty-free treatment for such Canadian articles. The responsibilities of Secretary of Commerce relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers and the authority to promulgate rules and regulations pertaining thereto have been delegated to Under Secretary for International Trade, Department of Commerce pursuant to Department of Commerce Organization Order 40-1, Amendment 9 of January 22, 1984 (49 FR 4538).

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.2 Definitions.

For the purpose of the regulations in this part and the forms issued to implement it:

(a) "Act" means the Automotive Products Trade Act of 1965 (79 Stat. 1016, 19 U.S.C. 2001 through 2033).

(b) "Under Secretary" means Under Secretary for International Trade of the Department of Commerce, or such official as may be designated by the Under Secretary to act in his or her behalf.

(c) "Motor vehicle" means a motor vehicle of a kind described in item 692.05 or 692.10 of subpart B, part 6, schedule 6, of the Tariff Schedules of the United States (excluding an electric trolley bus and a three-wheeled vehicle) or an automotive truck tractor.

(d) "Bona fide motor-vehicle manufacturer" means a person who upon application to the Under Secretary is determined by the Under Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application, and to have had as of such date installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. A person shall only be regarded as having had the capacity to produce a complete motor vehicle if his operation included the assembly of two or more major components (e.g., the attachment of a body to a chassis) to create a new motor vehicle ready for use.

(e) "Person" includes any individual, corporation, partnership, association, company, or any kind of organization.

(f) "United States" includes only the States, the District of Columbia and Puerto Rico.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.3 Application.

Any person in the United States desiring to be determined a bona fide motor vehicle manufacturer shall apply to the Under Secretary by filing two copies of Form BIE-3 in accordance with the instructions set forth on the form and this part. Application forms may be obtained from the Under Secretary, District offices of the U.S. Department of Commerce, or from U.S. Collectors of Customs, and should be mailed or delivered to the:

U.S. Department of Commerce, International Trade Administration, Office of Automotive Industry Affairs—APTA, 14th and Constitution Avenue, NW., Room 4036, Washington, DC 20230.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.4 Determination by the Under Secretary.

(a) As soon as practicable after receipt of the application, the Under Secretary shall determine whether an applicant has produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application and as of such date, had installed capacity in the United States to produce 10 or more complete motor vehicles per 40 hour week. The Under Secretary may request such additional data from an applicant as he may deem appropriate to establish whether the applicant has satisfied the requirements of this part.

(b) A determination by the Under Secretary under this part shall be effective for a 12-month period to begin on the date as of which the Under Secretary determines that the applicant qualified under this part. Within 60 days prior to the termination of such period, a bona fide motor vehicle manufacturer may apply for another determination under this part.

(c) The Under Secretary will promptly notify each applicant in writing of the final action taken on his application.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

The Under Secretary shall maintain and publish from time to time in the FEDERAL REGISTER, a list of the names and addresses of bona fide motor vehicle manufacturers, and the effective dates from each determination.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

Sec.

325.1 Scope.
325.2 Definitions.
325.3 Applying for a certificate of review.
325.4 Calculating time periods.
325.5 Issuing the certificate.
325.6 Publishing notices in the Federal Register.
325.7 Amending the certificate.
325.8 Expediting the certification process.
325.9 Reconsidering an application that has been denied.
325.10 Modifying or revoking a certificate.
325.11 Judicial review.
325.12 Returning the applicant's documents.
325.13 Nonadmissibility in evidence.
325.14 Submitting reports.
325.15 Relinquishing a certificate.
325.16 Protecting confidentiality of information.
325.17 Waiver.

AUTHORITY: Title III of the Export Trading Company Act, Pub. L. 97-290 (96 Stat. 1240-1245, 15 U.S.C. 4011-4021).

SOURCE: 50 FR 1806, Jan. 11, 1985, unless otherwise noted.

§ 325.1 Scope.

This part contains regulations for issuing export trade certificates of review under Title III of the Export Trading Company Act, Pub. L. 97-290. A holder of a certificate of review and the members named in the certificate will have specific protections from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

§ 325.2 Definitions.

As used in this part:

(a) "Act" means Title III of Pub. L. 97-290, Export Trade Certificates of Review.

(b) "Antitrust laws" means the antitrust laws, as the term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) "Applicant" means the person or persons who submit an application for a certificate.

(d) "Application" means an application for a certificate to be issued under the Act.

(e) "Attorney General" means the Attorney General of the United States or his designee.

(f) "Certificate" means a certificate of review issued pursuant to the Act.

(g) "Control" means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of an unincorporated entity, a majority of the individuals who exercise similar functions.

(h) "Controlling entity" means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) "Export conduct" means specified export trade activities and methods of operation carried out in specified export trade and export markets.

(j) "Export trade" means trade or commerce in goods, wares, merchandise, or services that are exported, or are in the course of being exported, from the United States or any territory of the United States to any foreign nation.

(k) "Export trade activities" means activities or agreements in the course of export trade.

(l) "Member" means an entity (U.S. or foreign) or a person which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.

(m) "Method of operation" means any method by which an applicant or member conducts or proposes to conduct export trade.

(n) "Person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether it is organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.

(o) "Secretary" means the Secretary of Commerce or his designee.

(p) "Services" means intangible economic output, including, but not limited to—

(1) business, repair, and amusement services,

(2) management, legal, engineering, architectural, and other professional services, and

(3) financial, insurance, transportation, informational and any other data-based services, and communication services.

(q) "United States" means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 325.3 Applying for a certificate of review.

(a) *Place of filing.* The applicant shall submit an original and two copies of a completed application form (ITA 4093-P, OMB control number 0625-0125) by personal delivery during normal business hours or by first class mail to the Office of Export Trading Company Affairs, Room 5618, International Trade Administration, Department of Commerce, Washington, DC 20230. Although not required, the applicant should consider using registered mail or some other delivery method that provides evidence of receipt.

(b) *Contents of application.* Any person may submit an application for certification. The application shall contain, where applicable, the information listed below. Some information, in particular the identification of goods or services that the applicant exports or proposes to export, is requested in a certain form (Standard Industrial Classification [SIC] numbers) if reasonably available. Where information does not exist in this form, the applicant may satisfy the request for information by providing it in some other convenient form. If the applicant is unable to provide any of the information requested or if the applicant believes that any of the information requested would be both burdensome to obtain and unnecessary for a determination on the application, the applicant should state that the information is not being provided or is being provided in lesser detail, and explain why.

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number, and relationship to the applicant of each individual to whom the Secretary should address correspondence.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, bylaws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized.

(4) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other docu-

ments submitted in connection with the application, a description of the applicant's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(5) A copy of each member's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of each member's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(6) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses that produce or sell any of the types of goods or services described in paragraph (b)(7) of this section.

(7)(i) A description of the goods or services which the applicant exports or proposes to export under the certificate of review. This description should reflect the industry's customary definitions of the products and services.

(ii) If it is reasonably available, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should normally be identified at the most detailed SIC level available.

(iii) The foreign geographic areas to which the applicant and each member export or intend to export their goods and services.

(8) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section:

(i) The principal geographic area or areas in the United States in which the applicant and each member sell their goods and services.

(ii) For their previous two fiscal years, the dollar value of the applicant's and each member's (A) total domestic sales, if any; and (B) total export sales, if any. Include the value of the sales of any controlling entities and all entities under their control.

(9) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section, the best information or estimate accessible to the applicant of the total value of sales in the United States by all companies for the last two years. Identify the source of the information or the basis of the estimate.

(10) A description of the specific export conduct which the applicant seeks to have certified. Only the specific export conduct described in the application will be eligible for certification. For each item, the applicant should state the antitrust concern, if any, raised by that export conduct. (Examples of export conduct which applicants may seek to have certified include the manner in which goods and services will be obtained or provided; the manner in which prices or quantities will be set; exclusive agreements with U.S. suppliers or export intermediaries; territorial, quantity, or price agreements with U.S. suppliers or export intermediaries; and restrictions on membership or membership withdrawal. These examples are given only to illustrate the type of export conduct which might be of concern. The specific activities which the applicant may wish to have certified will depend on its particular circumstances or business plans.).

(11) If the export trade, export trade activities, or methods of operation for which certification is sought will involve any agreement or any exchange of information among suppliers of the same or similar products or services with respect to domestic prices, production, sales, or other competitively sensitive business information, specify the nature of the agreement or exchange of information. Such information exchanges are not necessarily impermissible and may be eligible for certification. Whether or not certification is sought for such exchanges, this information is necessary to evaluate whether the conduct for which certifi-

cation is sought meets the standards of the Act.

(12) A statement of whether the applicant intends or reasonably expects that any exported goods or services covered by the proposed certificate will re-enter the United States, either in their original or modified form. If so, identify the goods or services and the manner in which they may reenter the U.S.

(13) The names and addresses of the suppliers of the goods and services to be exported (and the goods and services to be supplied by each) unless the goods and services to be exported are to be supplied by the applicant and/or its members.

(14) A proposed non-confidential summary of the export conduct for which certification is sought. This summary may be used as the basis for publication in the FEDERAL REGISTER.

(15) Any other information that the applicant believes will be necessary or helpful to a determination of whether to issue a certificate under the standards of the Act.

(16) (Optional) A draft proposed certificate.

(c) The applicant must sign the application and certify that (1) each member has authorized the applicant to submit the application, and (2) to the best of its belief the information in the application is true, correct, and fully responsive.

(d) *Conformity with regulations.* No application shall be deemed submitted unless it complies with these regulations. Applicants are encouraged to seek guidance and assistance from the Department of Commerce in preparing and documenting their applications.

(e) *Review and acceptance.* The Secretary will stamp the application on the day that it is received in the Office of Export Trading Company Affairs. From that date, the Secretary will have five working days to decide whether the application is complete and can be deemed submitted under the Act. On the date on which the application is deemed submitted, the Secretary will stamp it with that date and notify the applicant that the application has been accepted for review. If the application is not accepted for review, the Secretary shall advise the applicant that it may file the application again after correcting the deficiencies that the Secretary has specified. If the Secretary does not take action on the application within the five-day period, the application shall be deemed submitted as of the sixth day.

(f) *Withdrawal of application.* The applicant may withdraw an application by written request at any time before the Secretary has determined whether to issue a certificate. An applicant who withdraws an application may submit a new application at any time.

(g) *Supplemental information.* After an application has been deemed submitted, if the Secretary or the Attorney General finds that additional information is necessary to make a determination on the application, the Secretary will ask the applicant in writing to supply the supplemental information. The running of the time period for a determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and is considered complete. The Secretary shall promptly decide whether the supplemental information is complete, and shall notify the applicant of his decision. If the information is being sought by the Attorney General, the supplemental information may be deemed complete only if the Attorney General concurs. If the applicant does not agree to provide the additional information, or supplies information which the Secretary or the Attorney General considers incomplete, the Secretary and the Attorney General will decide whether the information in their possession is sufficient to make a determination on the application. If either the Secretary or the Attorney General considers the information in their possession insufficient, the Secretary may make an additional request or shall deny the application. If they consider the information in their possession sufficient to make a determination on the application, the Secretary shall notify the applicant that the time period for a determination has resumed running.

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 0625-0125)

§ 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time period, and the last day of the time period falls on a non-working day, the time period shall be extended to the next working day.

(b) The day after an application is deemed submitted shall be deemed the first of the days within which the Secretary must make a determination on the application.

§ 325.5 Issuing the certificate.

(a) *Time period.* The Secretary shall determine whether to issue a certificate within ninety days after the application is deemed submitted (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). If the Secretary or the Attorney General considers it necessary, and the applicant agrees, the Secretary may take up to an additional thirty days to determine whether to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors who are engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Not later than seven days after an application is deemed submitted, the Secretary shall deliver to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information that was obtained in connection with the application, unless otherwise prohibited by law.

(2) Not later than thirty days before the day a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than ten days before the day a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(3) If the Attorney General receives the proposed certification by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export conduct and all persons or entities which are protected from liability under the antitrust laws. The Secretary may certify the proposed export conduct contained in the application, in whole or in part, with such changes, modifications, terms, or conditions as are appropriate. If the Secretary intends to issue a certificate different from a draft certificate submitted by the applicant, the Secretary shall first consult with the applicant.

(e) *Certificate obtained by fraud.* A certificate shall be void *ab initio* with respect to any export conduct for which a certificate was obtained by fraud.

(f) *Minimum thirty-day period.* The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

§ 325.6 Publishing notices in the Federal Register.

(a) Within ten days after an application is deemed submitted, the Secretary shall deliver to the FEDERAL REGISTER a notice summarizing the application. The notice shall identify the applicant and each member and shall include a summary of the export conduct for which certification is sought. If the Secretary does not intene to publish the summary proposed by the applicant, he shall notify the applicant. Within twenty days after the date the notice is published in the FEDERAL REGISTER, interested parties may submit written comments to the Secretary on the application. The Secretary shall provide a copy of such comments to the Attorney General.

(b) If a certificate is issued, the Secretary shall publish a summary of the certification in the FEDERAL REGISTER. If an application is denied, the Secretary shall publish a notice of denial. Certificates will be available for inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility.

(c) If the Secretary initiates proceedings to revoke or modify a certificate, he shall publish a notice of his final determination in the FEDERAL REGISTER.

(d) If the applicant requests reconsideration of a determination to deny an application, in whole or in part, the Secretary shall publish notice of his final determination in the FEDERAL REGISTER.

§ 325.7 Amending the certificate.

An application for an amendment to a certificate shall be treated in the same manner as an original application. The application for an amendment shall set forth the proposed amendment(s) and the reasons for them. It shall contain any information specified in § 325.3(b) that is relevant to the determination on the application for an amendment. The effective date of an amendment will be the date on which the application for the amendment was deemed submitted.

§ 325.8 Expediting the certification process.

(a) *Request for expedited action.* (1) An applicant may be granted expedited action on its application in the discretion of the Secretary and the Attorney General. The Secretary and the Attorney General will consider such requests in light of an applicant's showing that it has a special need for a prompt decision. A request for expedited action should include an explanation of why expedited action is needed, including a statement of all relevant facts and circumstances, such as bidding deadlines or other circumstances beyond the control of the applicant, that require the applicant to act in less than ninety days and that have a significant impact on the applicant's export trade.

(2) The Secretary shall advise the applicant within ten days after the application is deemed submitted whether it will receive expedited action. The Secretary may grant the request in whole or in part and process the remainder of the application through the normal procedures. Expedited action may be granted only if the Attorney General concurs.

(b) *Time period.* The Secretary shall determine whether to issue a certificate to the applicant within forty-five days after the Secretary granted the request for expedited action, or within a longer period if agreed to by the applicant (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

(c) *Concurrence of the Attorney General.* (1) Not later than ten working days before the date on which a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than five working days before the date on which a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(2) If the Attorney General receives the proposed certificate by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(Information collection requirements in paragraph (a)(1) approved by the Office of Management and Budget under control number 0625-0125)

§ 325.9 Reconsidering an application that has been denied.

(a) If the Secretary determines to deny an application in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within thirty days after receiving a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration shall include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and any additional information that the applicant considers relevant.

(2) Upon the request of the applicant, the Secretary and the Attorney General will meet informally with the applicant and/or his representative to discuss the applicant's reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to reconsidering an application. The Secretary may modify his original determination only if the Attorney General concurs.

(d) The Secretary shall notify the applicant in writing of his final determination after reconsideration and of his reasons for the determination within thirty days after the request for reconsideration has been received.

§ 325.10 Modifying or revoking a certificate.

(a) *Action subject to modification or revocation.* The Secretary shall revoke a certificate, in whole or in part, or modify it, as the Secretary or the Attorney General considers necessary, if:

(1) The export conduct of a person or entity protected by the certificate no longer complies with the requirements set forth in § 325.4(b);

(2) A person or entity protected by the certificate fails to comply with a request for information under paragraph (b) of this section; or

(3) The certificate holder fails to file a complete annual report.

(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person or entity protected by a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall request any information that he or the Attorney General considers to be necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate*—(1) *Notification letter.* If, after reviewing the relevent information in their possession, it appears to the Secretary or the Attorney General that a certificate should be revoked or modified for any of the reasons set forth in paragraph (a) above, the Secretary shall so notify the certificate holder in writing. The notification shall be sent by registered or certified mail to the address specified in the certificate. The notification shall include a detailed statement of the facts, conduct, or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer.* The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in

the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination.* The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in § 325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revocation of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination. If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the FEDERAL REGISTER of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other information which each is relying upon under these proceedings.

§ 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under § 325.5, § 325.7, § 325.9, or § 325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the FEDERAL REGISTER, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the FEDERAL REGISTER notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the FEDERAL REGISTER.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

§ 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.

§ 325.13 Nonadmissibility in evidence.

If the Secretary denies, in whole or in part, an application for a certificate or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

§ 325.14 Submitting reports.

(a) Not later than each anniversary of a certificate's effective date, the Secretary shall notify the certificate holder of the information to be included in the annual report. This report shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application brought current to the anniversary date, and any other information the Secretary considers appropriate, after consultation with the Attorney General.

(b) Not later than forty-five days after each anniversary of a certificate's effective date, a certificate holder shall submit its annual report to the Secretary. The Secretary shall deliver a copy of the annual report to the Attorney General.

(c) Failure to submit a complete annual report may be the basis for modification or revocation of a certificate.

§ 325.15 Relinquishing a certificate.

A certificate holder may relinquish a certificate at any time through written notice to the Secretary. The certificate will cease to be effective on the day the Secretary receives the notice.

§ 325.16 Protecting confidentiality of information.

(a) Any information that is submitted by any person under the Act is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not to issue, amend, or revoke a certificate, if—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause,

(v) In accordance with any requirement imposed by a statute of the United States.

(c) In any judicial or administrative proceeding in which disclosure is sought from the Secretary or the Attorney General of any confidential or privileged documents or information submitted under this Act, the Secretary or Attorney General shall attempt to notify the party who submitted the information of the request or demand for disclosure. In appropriate circumstances the Secretary or Attorney General may seek or support an appropriate protective order on behalf of the party who submitted the documents or information.

§ 325.17 Waiver.

The Secretary may waive any of the provisions of this part in writing for good cause shown, if the Attorney General concurs and if permitted by law.

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PART 400—GENERAL REGULATIONS GOVERNING FOREIGN-TRADE ZONES IN THE UNITED STATES, WITH RULES OF PROCEDURE

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AUTHORITY: Sec. 8, 48 Stat. 1000; 19 U.S.C. 81h.

SOURCE: Regulations, June 29, 1935, unless otherwise noted.

DEFINITIONS

§ 400.100 Act.

The term "Act" means the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998 through 1003; 19 U.S.C. 81a-81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950.

[Order 29, 17 FR 5316, June 11, 1952]

§ 400.101 Zone.

The term "zone" means a "foreign-trade zone." It is an isolated, enclosed, and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unlading, handling, storing, manipulating, manufacturing, and exhibiting goods, and for reshipping them by land, water, or air. Any foreign and domestic merchandise, except such as is prohibited by law or such as the Board may order to be excluded as detrimental to the public interest, health, or safety may be brought into a zone without being subject to the customs laws of the United States governing the entry of goods or the payment of duty thereon; and such merchandise permitted in a zone may be stored, exhibited, manufactured, mixed or manipulated in any manner, except as provided in the act and other applicable laws or regulations. The merchandise may be exported, destroyed, or sent into customs territory from the zone, in the original package or otherwise. It is subject to customs duties if sent into customs territory, but not if reshipped to foreign points.

[Order 29, 17 FR 5316, June 11, 1952]

CROSS REFERENCES: For immigration regulations, see 8 CFR Chapter I. Regulations of the Customs Service, see 19 CFR Chapter I. Postal Service, see 39 CFR Chapter I. Public Health, see 42 CFR Chapter I.

§ 400.102 Secretary of Commerce.

The term "Secretary" means the Secretary of Commerce.

§ 400.103 Board.

The term "Board" means the Board created by the Act to carry out the provisions thereof. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer, the Secretary of the Treasury, and the Secretary of the Army.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.104 State.

The term "State" includes any State, the District of Columbia and Puerto Rico.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.105 Corporation.

The term "corporation" means a public or a private corporation:

(a) "Public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States.

(b) "Private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under a special act (enacted after June 18, 1934) of the State or States within which it is to operate such zone.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.106 Applicant.

The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.107 Grantee.

The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted.

(Sec. 1, 48 Stat. 998; 19 U.S.C. 81a)

§ 400.108 District Director of Customs.

The term "District Director of Customs" means the director of customs in whose district the zone is located.

[Regulations, June 29, 1935, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.109 District Engineer.

The term "District Engineer" means the engineer of the Department of the Army in whose district the zone is located.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.110 Examiner.

The term "examiner" means an employee of the Board, an expert, officer, engineer, or any other person who is designated by the Board to conduct an investigation concerning the establishment, operation, maintenance, or administration of a zone.

JURISDICTION AND AUTHORITY OF BOARD

§ 400.200 Duties of the Board.

The Board is authorized, subject to the provisions of the act, the laws governing the navigable waters of the United States, the laws governing foreign and interstate commerce, those controlling the revenue, the Shipping Act of 1916, as amended (46 U.S.C. 801 et seq.), the Interstate Commerce Act (49 U.S.C. 1 et seq.), and other laws of the United States applicable to zones:

(a) To grant to corporations, subject to the conditions and restrictions of the act and of the rules and regulations made thereunder, the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States, if it finds that the proposed plans and location are suitable for the accomplishment of the purpose of the foreign-trade zone under the act, and that the facilities and appurtenances which it is proposed to provide are sufficient.

(b) To prescribe such rules and regulations as may be necessary to establish and conduct such zones.

(c) To approve rates and charges for all services or privileges within the zone, and to assure uniform treatment under like conditions to users of the zone or to merchandise within the zone subject to such treaties or commercial conventions in force at the time.

(d) To require compliance with lawful regulations of the Board and of other Government departments, State or municipal agencies, which may be applicable to the zone.

(e) To prescribe the form and manner of keeping the accounts of the zone.

(f) To require the submission annually, and at such other times as the Board may prescribe, of reports containing full statements of the operations, receipts, and expenditures, and such other information as the Board may require.

(g) To inspect and examine at such times as the Board may deem advisable the premises, operations, or accounts of the grantee.

(h) To impose fines of not to exceed $1,000 per day for violations of the act or of the regulations in this part.

(i) To revoke the grant of any corporation after due notice and public hearing for repeated and willful violations of the act.

(j) To prescribe reasonable and uniform regulations for like conditions and circumstances for the erection of buildings within the zone by other than the grantee.

(k) To make a report to the Congress on the first day of each regular session, containing a summary of the operation and fiscal condition of each zone, and to transmit therewith copies of the annual report of each grantee.

(l) To perform such other duties as may be necessary to administer the provisions of the act.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.201 Cooperation with other agencies.

The Board is authorized to cooperate:

(a) With other Government departments or other Federal agencies having jurisdiction in or adjacent to ports of entry.

(b) With State and local authorities in the exercise of their police, sanitary, and other powers in connection with the zone.

(Sec. 9, 48 Stat. 1000; 19 U.S.C. 81i)

§ 400.202 Cooperation with Board of other agencies of the Government.

By authority of the act and Executive Order 7104, the executive departments and other establishments of the Government will furnish to the Board such records, papers, and information in their possession as may be required by the Board, and temporarily detail to the service of the Board such officers, experts, or engineers as may be necessary to enable the Board to carry out its duties under the act.

(Sec. 10, 48 Stat. 1001; 19 U.S.C. 81j)

§ 400.203 Executive Order No. 7104.

Executive departments and other establishments of the Government are hereby ordered and directed to cooperate with the Board established by the act of June 18, 1934 (48 Stat. 998 through 1003; 19 U.S.C. 81a through 81u), for carrying out the purposes thereof, and at the request of the said Board to furnish it such records, papers, and information in their possession, as it may require, and to temporarily detail to its service such officers, experts, or engineers as may be necessary for the purpose of facilitating the investigation of the Board and its work in connection with the establishment, operation, and maintenance of foreign-trade zones.

[E.O. 7104, July 18, 1935]

NUMBER AND LOCATION OF ZONES

§ 400.300 Each port of entry entitled to at least one zone.

Subject to the provisions of the act and of the regulations in this part, each port of entry shall be entitled to at least one zone.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.301 Port of entry located in more than one State entitled to a zone in each such State.

When a port of entry is located within the confines of more than one State, such port of entry shall be entitled to a zone in each of such States.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.302 Zone may be authorized in each of two cities separated by water in one port of entry.

When two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.303 Additional zones in port of entry may be authorized by Board.

Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not serve adequately the convenience of commerce.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.304 Zones for specialized purposes.

The establishment of a zone, or a sub-zone in an area separate from an existing zone, for one or more of the specialized purposes of storing, manipulating, manufacturing, or exhibiting goods, may be authorized if the Board finds that existing or authorized zones will not serve adequately the convenience of commerce with respect to the proposed purposes.

[Order 29, 17 FR 5316, June 11, 1952]

ECONOMIC, FINANCIAL, AND PHYSICAL REQUIREMENTS FOR ESTABLISHMENT OF ZONE

§ 400.400 Economic survey of proposed zone.

Before a grant is made, an economic survey must demonstrate to the satisfaction of the Board that the anticipated commerce, benefits, and returns, both direct and indirect, will justify its construction to expedite and encourage foreign commerce. In considering the economic impact of the proposal, the Board will take into account its impact on the U.S. balance of payments, as well as its environmental impact in the light of national policy.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.401 Proof of ability of applicant adequately to finance zone.

The ability of the applicant adequately to finance and conduct the undertaking must be demonstrated to the complete satisfaction of the Board.

§ 400.402 Physical facilities required in the operation of a zone.

(a) *Where zone will be adjacent to water.* (1) Adequate slips to accommodate vessels engaged in foreign trade.

(2) Wharves and docks suitably constructed for the needs of the specific commodities to be handled over them.

(3) Mooring facilities for the protection of vessels while loading, unloading, or awaiting berth.

(4) Transit sheds on the wharves for the protection of goods accumulated for shipment or unloaded and awaiting disposition.

(5) Warehouses so constructed and located as to meet the requirements of goods to be stored and the special regulations of the Treasury Department to safeguard the revenue.

(6) Transportation connections with systems serving surrounding territory and other parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue.

(7) Fuel facilities for servicing vessels with coal or other fuel, with adequate reserve storage spaces.

(8) Light and power facilities throughout the zone, on the wharves and docks, and to meet any special requirements of the Treasury Department in safeguarding revenue.

(9) Water and sewer mains constructed to meet approved plans for service and health protection.

(10) Fire protection suitable for proper protection of zone and goods in storage.

(11) Administrative and living quarters and facilities for the officers and employees of the United States, State and municipality, whose duties may require their presence within the zone.

(12) Adequate enclosures to segregate the zone from customs territory for the protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise.

(13) Sanitary facilities and appliances to conform to Federal and local requirements.

(14) Adequate facilities for the disinfection and fumigation of merchandise as required.

(15) Such other facilities as may be required by the Board.

(b) *Where zone will not be adjacent to water.* (1) Warehouses so constructed and located as to meet the requirements of goods to be stored and the special regulations of the Treasury Department to safeguard the revenue.

(2) Transportation connections with systems serving surrounding territory and other parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue.

(3) Light and power facilities throughout the zone, and to meet any special requirements of the Treasury Department in safeguarding the revenue.

(4) Water and sewer mains constructed to meet approved plans for service and health protection.

(5) Fire protection suitable for proper protection of zone and goods in storage.

(6) Administrative and living quarters and facilities for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone.

(7) Adequate enclosures to segregate the zone from customs territory for the protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, and merchandise.

(8) Sanitary facilities and appliances o conform to Federal and local re- uirements.

(9) Adequate facilities for the disin- ection and fumigation of merchandise s required.

(10) Such other facilities as may be equired by the Board.

(c) *Ratproofing and sanitation.* All uildings and other structures within he zone, whether it is adjacent to ater or not, shall be so constructed r altered, and maintained, as may be equired by the Surgeon General, nited States Public Health Service, prevent the harborage of rodents. ater supply, sewage disposal, and rovision for general sanitation (in- uding adequate facilities for disinfec- on and fumigation) shall be as re- ired by the Surgeon General, nited States Public Health Service.

ec. 12, 48 Stat. 1001; 19 U.S.C. 81*l*)

§ 400.403 Construction and operation of equipment for segregation from customs territory and quarters for personnel.

(a) All zones shall be segregated from the land area of adjacent customs territory by a fence of woven galvanized-wire netting, of not less than No. 6 gage wire, with a mesh not exceeding 2 inches, and an over-all height of at least 10 feet above the concrete base in which the posts are set. The netting shall be securely attached to the insides of the posts and shall be set sufficiently low so as to be flush with the ground at all times. The fence shall be topped by at least three strands of galvanized barbed wire, four-point type, each strand consisting of two strands of No. 12½ gage wire. The three strands shall be secured to metal brackets affixed to the top of each post, the brackets inclining at approximately 45° inward and upward. The strands shall be parallel and from 3 to 4 inches apart. Suitable concrete or metal posts shall be set in concrete footings, not less than 3 feet deep by 10 inches square, and with centers not more than 10 feet apart. Proper anchors and braces shall be installed at corners and gates. The gates shall be of the same material and height as the fence and shall be topped by three strands of the barbed wire above described, such strands to be affixed to metal brackets perpendicular with the gate. Suitable attachments shall be secured to the gates for the purpose of affixing locks. Alternate proposals for barriers of equal efficiency may be approved by the Board.

(b) If, according to the terrain or other factors adjacent to the fence surrounding the enclosure, or for other reasons, the height of the fence as provided for herein is not sufficient for proper protection to the revenue, the height shall be suitably increased at the direction of the Board or the District Director of Customs.

(c) If sides of buildings situated within a zone from a part of the zone enclosure in lieu of the fence prescribed above, all openings in such sides of the buildings shall be securely closed by heavy metal netting, grills, or other effective barriers.

(d) Fences and other exterior lines of the zone shall be equipped with electric lights and shall be illuminated to the satisfaction of the collector during such times as he may deem necessary.

(e) Such additional protection against the unauthorized transit of persons, goods, or conveyances to or from a zone shall be provided as may be deemed necessary by the District Director of Customs.

(f) Adequate living quarters, administrative and other facilities for officers and employees of the United States, State, and municipality whose duties may require their presence within the zone, shall be provided by the grantee. The requirements and extent of these facilities will be fixed by the Board.

(g) Each grantee shall provide and maintain such other facilities as may be required from time to time by the Board.

(Sec. 12, 48 Stat. 1001; 19 U.S.C. 81*l*)

[Regulations, June 29, 1935, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

ELIGIBLE APPLICANTS

§ 400.500 Grants made to corporations.

Grants may be made to public or private corporations.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.501 Requirements for grant where harbor facilities owned and controlled by State and by municipality.

Where harbor facilities of any port of entry in the State are owned and controlled by the State, and where harbor facilities of any other port of entry in the State are owned and controlled by a municipality, grants to public corporations will not be approved by the Board unless such applications have been authorized by an act of the State legislature (enacted after June 18, 1934).

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.502 Act of State legislature necessary in case of private corporations.

Grants to private corporations will not be approved by the Board unless such corporations have been authorized by an act of the State legislature (enacted after June 18, 1934).

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

§ 400.503 Preference to public corporations.

In granting applications preference will be given by the Board to public corporations.

(Sec. 2, 48 Stat. 999; 19 U.S.C. 81b)

APPLICATIONS FOR GRANTS

§ 400.600 Address.

Applications for grants should be filed with, and all official communications in connection therewith addressed to the Secretary of Commerce, Chairman and Executive Officer of the Foreign-Trade Zones Board, Washington, DC 20230.

[Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.601 Number of copies.

Every application, and attachment, shall be submitted with 12 true copies in addition to the original, unless the Executive Secretary determines that fewer copies are needed.

[Order 86, 36 FR 24929, Dec. 24, 1971]

§ 400.602 Form and content.

Every application shall be in letter form on letter-size paper and shall contain the date, official designation of the applicant, and shall show whether the application is for the establishment or expansion of the zone, be signed by an authorized officer of the corporation, and bear the corporate seal.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.603 Exhibits.

Every application shall be accompanied by the following exhibits:

(a) *Exhibit No. 1.* Descriptions of (1) the location and qualifications of the area in which it is proposed to establish the zone, showing by metes and bounds, unless these are shown in full on the maps accompanying the application, the land and water area, or land or water area, or land area alone if the application is for the establishment of a zone in or adjacent to an interior port of entry; (2) the means of segregation from customs territory, as required by §§ 400.402, 400.403; (3) the fitness of the area for a zone; and (4) the possibilities of expansion of the zone area.

(b) *Exhibit No. 2.* A statement as to whether the port is within the confines of more than one State, and whether the zone will be in or adjacent to a port of entry.

(c) *Exhibit No. 3.* A statement giving full details as to the applicant's plans for acquiring title to, or the right to occupy and use, lands other than those owned by the applicant or by the United States, which are essential for carrying out the project or projects covered by the application. If the applicant, at the time of filing the application, has, by easement, lease, franchise, or otherwise, acquired the right to occupy and use lands owned by others, the statement must show, with respect to each separate right of occupancy and use:

(1) From whom acquired; (2) the date acquired; (3) nature and extent of the right acquired; (4) whether perpetual or of limited term; and (5) if of limited term, when such term expires.

(d) *Exhibit No. 4.* A statement showing in detail the method proposed to finance the undertaking, accompanied by proof of the ability of the applicant to finance the construction and operation of the zone.

(e) *Exhibit No. 5.* An economic survey showing in detail the potential commerce and revenue of the proposed zone and other direct and indirect benefits accruing therefrom; present foreign trade of the port area, including transshipment, reexport, and reconsignment trade; present transportation services, and possible increases in such services where necessary; comparative study of export rates on domestic commodities for mixing with foreign goods; analysis of transportation rates where applicable to zone activity; potential new markets for zone business; activities best suited to the particular zone; the impact that the operation of the zone is expected to have on the U.S. balance of payments and balance of trade; the expected environmental impact of the zone with details as to control measures not otherwise described in the next exhibit; and such other data as may be necessary to a determination of whether the establishment of the zone is justified to expedite and encourage foreign commerce in a manner compatible with domestic and foreign economic policy.

(f) *Exhibit No. 6.* (1) A description of the proposed project, where zone will be adjacent to water, to include:

(i) Slips and docks, giving number and for each the dimensions and depth of water below a stated datum;

(ii) Wharves, giving number and for each the type of construction, width, area, sheds, loading and unloading facilities, trackage, fire protection, motoring facilities, and an estimate of the number of ocean-going ships which could be accommodated;

(iii) Warehouses, giving type of construction, floor area, and fire protection;

(iv) Transportation connections by rail and highway, giving the number of tracks and routes by which they would be connected with existing rail and highway systems;

(v) Facilities for coal and other fuel, and for light and power;

(vi) Water and sewer mains;

(vii) Administrative and living quarters and facilities to be provided for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone (as required by §§ 400.800 through 400.812);

(viii) Enclosure to segregate the zone from customs territory, together with the provisions for ingress and egress of persons, conveyances, vessels, and merchandise, showing in detail compliance with §§ 400.800 through 400.812, and including a description of openings and, if buildings form part of the enclosure line, a full description of the construction of the buildings and any openings therein on the line side.

(2) A description of the proposed project, where zone will not be adjacent to water, to include:

(i) Loading and unloading facilities;

(ii) Warehouses, giving type of construction, floor area, and fire protection;

(iii) Transportation connections by rail and highway, giving the number of tracks and routes by which they would be connected with existing rail and highway systems;

(iv) Facilities for coal and other fuel, and for light and power;

(v) Water and sewer mains;

(vi) Administrative and living quarters and facilities to be provided for the officers and employees of the United States, State, and municipality, whose duties may require their presence within the zone (as required by §§ 400.800 through 400.812);

(vii) Enclosure to segregate the zone from customs territory, together with the provisions for ingress and egress of persons, conveyances, and merchandise, showing in detail compliance with §§ 400.800 through 400.812, and including a description of openings and, if buildings form part of the enclosure line, a full description of the construction of the buildings and any openings therein on the line side.

(g) *Exhibit No. 7.* A preliminary estimate of the cost of the proposed project, sufficiently detailed to be subject to verification.

(h) *Exhibit No. 8.* A statement of the time after the date of the approval of the application within which the applicant proposes to commence and complete the construction of the zone and the facilities and appurtenances, and to set up and commence operation of the zone.

(i) *Exhibit No. 9.* The largest scale charts of the United States Coast and Geodetic Survey of the locality, showing in red the boundaries of the proposed zone (four copies); or if an interior zone, four copies of a map on an appropriate scale, showing in red the boundaries of the proposed zone.

(j) *Exhibit No. 10.* A detailed map, on tracing linen and three blue line prints, showing the proposed lay-out of the zone.

(1) The map shall be not smaller than 24 inches by 36 inches and not larger than 28 inches by 40 inches; shall have a clear border of one-half inch on three sides and 2½ inches on the left-hand shorter side; shall have a numerical scale and a graphical scale, the latter not less than 6 inches in length; shall have the true meridian indicated thereon; and shall have a space 4 inches by 7 inches in the lower right-hand corner, the upper half of which shall bear the title, scale, etc., and the lower half shall be left clear.

(2) The map shall show, in land areas, all existing structures and improvements, and, on water areas, by soundings, the present depths below a plane of reference stated on the map. The outline of the proposed slips, docks, wharves, warehouses, streets and highways, railroads, facilities for fuel, light, power, water and sewer mains; quarters and enclosures shall be shown by suitable heavy lines and these features designated clearly by lettering. The depths to be provided in water areas below the noted datum plane shall be shown by figures.

(3) The scale of the map shall be such as to show the complete zone on one sheet of the size prescribed.

(4) If rail connections to existing railroad systems cannot be shown on the map of the zone, an additional map or maps on tracing linen and three blue line prints, showing the proposed rights-of-way therefor and all structures, streets, and other improvements affected thereby shall be furnished. These maps shall be subject to the same requirements as to size, border, scale, meridian, and title as the map of the zone.

(k) *Exhibit No. 11.* (1) If the applicant is a State, the application for a grant shall be accompanied, as evidence of the applicant's qualifications to make application, by a copy of the law or laws under authority of which the application is made, duly certified by the Governor or secretary of state of the State under seal, and three uncertified copies of such law or laws (enacted after June 18, 1934).

(2) If the applicant is a public corporation, other than a State, as defined in section 1(e) of the act, the application for a grant shall be accompanied by evidence of the applicant's qualifications to make the application, as follows:

(i) A copy of its charter or other organization papers duly certified by the secretary of state of the State in which it is located, or by the officer having legal custody of the record of municipal and other public corporations (one copy only);

(ii) A statement under seal of the secretary of state of the State or other officer charged by State laws with supervision of harbor facilities, setting forth whether the State owns and controls harbor facilities of any port of entry and whether harbor facilities of any other port of entry in the State are owned and controlled by a municipality, with three uncertified copies of such statement.

(3) If the applicant is a private corporation, the application for a grant shall be accompanied by evidence of the applicant's qualifications to make the application, as follows:

(i) A copy of its charter or articles of incorporation duly certified by the secretary of state of the State where organized or other officer having legal custody of a record of incorporation (one certified and three uncertified copies);

(ii) A statement, under corporate seal, setting forth that the organization of the corporation is completed, showing that the corporation is authorized to proceed with the establishment of a foreign-trade zone under the laws of the State, and giving a true list of the principal officers of the corporation, with the full names and official designation of each, with three copies of such statement;

(iii) A certified copy of the special act or acts of the State or States in which the zone is located (enacted after June 18, 1934) and providing for the chartering of the corporation for the specific purpose of establishing a zone, with three uncertified copies of such act or acts.

(l) *Exhibit No. 12.* Evidence satisfactory to the Board that permits for construction have been obtained from Federal, State, or municipal authorities.

(m) *Exhibit No. 13.* Duly authenticated copies of the proceedings of the governing body of the corporation authorizing the official signing the application to make such application.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

[Regulations, June 29, 1935, as amended by Order 17, 14 FR 3671, July 2, 1949; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.604 Additional information.

An applicant may be required by the Board to furnish maps, plans, or other data in addition to the requirements specifically set forth in the regulations in this part, if, in the judgment of the Board, such additional data are desirable for a full understanding of the projects, or for the purpose of enabling the Board to review the design thereof, either in whole or in part.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.605 Public notice of application.

Subsequent to determining the filing date of an application to establish a zone, as prescribed by § 400.608, public notice will be given in the FEDERAL REGISTER and in news releases. Notices will contain the names and addresses of applicants, general description of the project, arrangements for public hearings scheduled, and provisions for interested parties to communicate their views to the Board, in person or in writing. At public hearings upon any application, officials of the Board may require the presentation of such information respecting the application as in their judgment the proper conduct of the hearings or the public interest requires.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.606 Amendments.

The Board may upon its own initiative or upon request permit the amendment of an application.

(Sec. 6, 48 Stat. 1000; 19 U.S.C. 81f)

§ 400.607 Applications for expansion of zone and modification of zone boundaries.

Applications for expansion of an established zone shall be made and approved in the same manner as an original application. In cases of requests for minor modifications in zone boundaries which are not designed to expand zone operations and will not result in such an expansion, the Executive Secretary is authorized to determine the requirements for the exhibits to such applications. Among the exhibits there shall be a report from the District Director of Customs and of the District Engineer. If the latter two officials recommend that the requested modification be approved, the Executive Secretary shall have the authority to approve the application.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.608 Determining filing date.

Applications will be considered to have been filed as of the date of receipt by the Board of the information called for in §§ 400.600 through 400.604. The applicant will be advised of the filing date of his application.

[Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.609 Information exempt from public inspection.

An application should not contain confidential information, and any part of the application marked clearly as requiring restricted handling will not be accepted. Data which in the opinion of the applicant should be treated as confidential may be so marked and submitted to the Board as a separate supplement. However, the Board reserves the right not to accept for inclusion in the record any papers containing data for which confidential treatment is sought.

[Order 74, 32 FR 13714, Sept. 30, 1967]

GRANTS SUBJECT TO CONDITIONS

§ 400.700 Failure to comply with conditions of grant.

Should the grantee fail to comply with any of the conditions of a zone or subzone grant issued by the Board, including the provisions concerning construction and commencement of operations, the Board may revoke the grant or declare it null and void. In such cases the Board may issue an order to show cause why the action it contemplates should not be taken, and the grantee shall have 30 days in which to answer.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.701 Disposition of grant prohibited.

The grant shall not be sold, conveyed, transferred, set over, or assigned.

(Sec. 17, 48 Stat. 1002; 19 U.S.C. 81q)

§ 400.702 Special conditions.

Special conditions applicable to a particular zone may be required by the Board and inserted in the grant for that zone.

OPERATION OF ZONE

§ 400.800 Operations in zone, and forms and procedures.

The merchandise and operations permitted in a zone, the disposition of merchandise in a zone, the zone status of the merchandise and special provisions applicable to each status, the subsequent importation of merchandise exported from a zone, and other operations in a zone authorized by the act, are hereinafter in this part generally described. The zone forms[1] required are appended to these regulations and made a part thereof, and the procedures required are set forth in Customs regulations relating to foreign-trade zones (19 CFR Part 146), and the regulations and schedules of rates and charges made and fixed by the zone grantee and approved by the Board.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.801 Merchandise permitted in a zone.

Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in the act and the regulations made thereunder, be brought into a zone.

(a) Merchandise which is specifically and absolutely prohibited by law shall not be admitted into a zone. Any merchandise so prohibited by law which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise. A distinction is made between (1) merchandise which is specifically and absolutely prohibited by law on the grounds of policy or morals, such as immoral or subversive literature, obscene articles, or lottery matter, and (2) conditionally admissible merchandise which may be imported under certain conditions, for example, articles which are subject to permits or licenses for the protection of economic or national security or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. District Directors of Customs are required to exclude the first class of articles and may not permit them to be transferred to a zone if they are aware of their prohibited status, except that the collector may permit the temporary deposit of any such merchandise in the zone pending final determination of its status. The transfer of articles of the second class to a zone is subject to any requirements of the Federal agency concerned. Unless otherwise prohibited, over-quota merchandise may be placed in a zone pending its right to transfer to customs territory pursuant to the applicable quota provisions.

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[1] Zone Forms B, C, D, E, F filed, as part of original document.

(b) The application for the admission of merchandise into a zone shall be approved or disapproved by the District Director of Customs, as the representative of the Board, where the merchandise is not excluded by any other Federal agency having jurisdiction over the merchandise.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.802 Disposition of merchandise in a zone.

In general, merchandise lawfully brought into a zone may, in accordance with these and other regulations made under the provisions of the act be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise, and domestic merchandise whose identity has been lost, is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise.

[Order 29, 17 FR 5316, June 11, 1952]

§ 400.803 Manipulation, manufacture, and exhibition of merchandise.

In general, merchandise, lawfully brought into a zone may, in accordance with these and other regulations made under the provisions of the act, be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign and domestic merchandise, or otherwise manipulated, or be manufactured, except as otherwise provided by the act.

(a) Permission for any manipulation, manufacture, or exhibition in a zone shall be obtained from the District Director of Customs, as the representative of the Board, subject to such application and procedure prescribed by the Secretary of the Treasury for the protection of the revenue.

(b) In the event of the denial of any application by the District Director of Customs for any reason, the applicant, the grantee, or the operator of the zone may appeal the adverse ruling to the Board. If any revenue-protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.804 Status of merchandise in a zone.

(a) For the purposes of the act and the regulations of this part, all merchandise within a zone, except merchandise in transit through a zone as provided in § 146.14 of customs regulation,[2] and except merchandise temporarily transferred to a zone for manipulation as provided in paragraph (b) of this section, shall be given a zone status as:

(1) Privileged foreign merchandise,

(2) Privileged domestic merchandise,

(3) Non-privileged foreign merchandise,

(4) Non-privileged domestic merchandise, or

(5) Zone-restricted merchandise, in accordance with §§ 146.21, 146.22,

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[2] 19 CFR Part 146.

146.23, 146.24, and 146.25 of Customs regulations.

(b) Imported merchandise which has been entered and which has remained in continuous customs custody may be temporarily transferred to a zone for manipulation under customs supervision pursuant to section 562, Tariff Act of 1930, as amended, and for return to customs territory. Any such merchandise shall not be considered within the purview of the Foreign-Trade Zones Act, but shall be treated in all respects as though remaining in customs territory. Therefore no zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent customs laws.

[Order 29, 17 FR 5316, June 11, 1952, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.805 Use of zone by carriers.

The water area, docking facilities, and loading or unloading stations of a zone are intended primarily for the use of vessels, vehicles, or aircraft unlading merchandise into the zone or lading merchandise from the zone, and their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue, or by the Board if found to interfere with the primary uses of the zone.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.806 Subsequent importation of zone merchandise.

Articles produced or manufactured in a zone and exported therefrom shall, on subsequent importation into the customs territory of the United States, be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of section 3 of the act, as amended, may, on such importation, be entered as American goods returned.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.807 Exclusion from zone of goods or process of treatment.

When it shall be reported to the Board that any goods or process of treatment is detrimental to the public interest, health, or safety, the Board shall cause such investigation to be made as it may deem necessary. The Board may order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5316, June 11, 1952]

§ 400.808 Retail trade within zone.

No retail trade shall be conducted within a zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory. Permits which are sent to the Board for approval shall be accompanied by a sworn statement, subscribed to by the applicant before a duly authorized officer to administer oaths, setting forth in detail the nature of the retail trade to be conducted, and containing an agreement that such applicant will sell no goods, except of the kinds specifically authorized by the act, which are brought into the zone from customs territory. No goods shall be offered for sale or sold in a zone which are not of the same kind and quality permitted to be offered for sale or sold in the political jurisdiction in which the zone is located. If the permittee violates any provision of the regulations in this part, his permit shall be revoked by the grantee, who shall immediately report such action to the Board.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5316, June 11, 1952]

§ 400.809 Residence within zone.

No person shall be allowed to reside within a zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary by the Board.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.810 Employees and persons entering and leaving zone.

Employees and other persons entering or leaving a zone shall pass through the designated entrances and exits in the enclosure surrounding the zone, except that ships' crews and passengers, duly authorized pilots and helmsmen, and employees of the Federal Government may enter or leave aboard vessels arriving at or departing from the zone; and except that crews of service vessels, such as ship chandlers' boats, tug boats, water boats, fuel barges, cargo lighters, and barges, and crews of floating equipment for use in connection with vessel repairs or maintenance, or for maintenance of structures of the zone or its channels or slips, may enter or leave a zone by way of prescribed water routes or courses. Employees and other persons shall be subject to such examination upon entering and leaving a zone as the collector may deem necessary for the protection of the revenue.

(Sec. 15, 48 Stat. 1002; 19 U.S.C. 81o)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.811 All persons entering zone bound by regulations.

All persons entering a zone for any reason whatsoever shall be bound by the regulations promulgated by the Board and by the operator of the zone.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.812 Identification of employees within zone.

All persons on duty within, and in connection with the operation of, a zone, with the exception of Federal employees and uniformed employees of the zone shall be required while within the zone to carry identification cards or wear appropriate identification badges to be provided by the operator of the zone.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.813 Hours of business and service.

Hours of business and service, for customs purposes, shall be the same as those prescribed in Customs regulations. (19 CFR Chapter 1)

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.814 Payment of customs officers and employees.

(a) The cost of maintaining the customs service in a zone shall be paid monthly by the grantee of such zone to the District Director of Customs.

(b) Customs officers and employees performing services in a zone at night, or on Sundays and holidays, shall receive extra compensation, to be computed as and under the conditions prescribed by customs regulations.

(c) For the purpose of computing extra compensation the word "night" shall be construed to mean the time from 5:00 p.m. to 8:00 a.m. and the word "holiday" shall include only national holidays, viz., January 1, February 22, May 30, July 4, the first Monday in September, November 11, the fourth Thursday in November, and December 25, and such other days as may be made national holidays.

(d) In a zone at a port where customary working hours are other than those herein mentioned, the District Director of Customs is authorized to regulate the hours of customs officers and employees assigned to the zone so as to agree with prevailing working hours in said port, but nothing herein shall be construed in any manner to affect or alter the length of a working day for customs officers or employees, or the overtime pay.

[Order 29, 17 FR 5317, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967]

§ 400.815 Erection of buildings within zone by persons other than grantee.

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirement: *Provid-*

ed, (a) That such permission shall not constitute a vested right as against the United States, nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States; (b) that in the event of the United States or the grantee desiring to acquire the property of the permittee, no good will shall be considered as accruing from the privilege granted to the zone; and (c) that such permits shall not be granted on terms that conflict with the public use of the zone as set forth in the act: *And provided further*, That accepted sanitary practices be followed in the construction, equipment, and operation of such buildings and other structures.

(Sec. 13, 48 Stat. 1001; 19 U.S.C. 81m)

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

MAINTENANCE OF ZONE

§ 400.900 Structures and facilities to be maintained in good order.

The grantee shall at all times maintain the structures and other facilities within the zone in good condition and so as not to endanger the life and health of employees of the United States and others who may be required to enter the zone.

§ 400.901 Penalty for failure to make repairs or alterations.

Should the grantee fail to make such repairs or alterations as may be ordered by the Board, action will be taken as provided in §§ 400.1200 through 400.1203.

ADMINISTRATION OF ZONE

§ 400.1000 Operation, maintenance and administration.

The zone shall be operated, maintained, and administered by the grantee under (a) the supervision, direction, and control of the Board in accordance with the provisions of the act and the regulations of the Board in this part, (b) the regulations relating to foreign-trade zones of the Bureau of Customs for the protection of the revenue (19 CFR Part 146) and any other law, regulation, or instruction the Customs Service is required or authorized to enforce, (c) such other applicable laws and regulations thereunder of other Federal agencies, and (d) the regulations and schedules of rates and charges made and fixed by the grantee and approved by the Board. The District Director of Customs in whose district the zone is located shall, in addition to his duties as District Director of Customs, be in local charge of the zone as the resident representative of the Board. He may call upon the district engineer and local representatives of other governmental departments and agencies for advice in matters of operation, maintenance, and administration.

[Order 29, 17 FR 5317, June 11, 1952, as amended by Order 74, 32 FR 13714, Sept. 30, 1967; Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1001 Regulations promulgated by grantee, and posting of regulations within zone.

The grantee shall, before beginning operation of a zone submit to the Board its own rules, regulations, and practices for the operation of the zone, subject to disapproval of the Board. There shall be posted in a conspicuous place within the zone copies of the regulations issued by the Board and the approved regulations of the grantee, or of such extracts from either or both of such regulations as the Board may designate.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.1002 Grantee's reports to Board.

Each grantee shall make to the Board annually, and at such other times as the Board may prescribe, reports containing a full statement of the operations, receipts, expenditures, and such other information as the Board may require. After the establishment of a zone, the Board will prescribe the form and manner of keeping the accounts.

(Sec. 16, 48 Stat. 1002; 19 U.S.C. 81p)

§ 400.1002a Uniform system of accounts, records, and reports.

Every grantee of a zone shall keep its books, records, and accounts in the form and manner prescribed in "Uniform System of Accounts, Records, and Reports", approved February 6, 1939.

[Order 29, 17 FR 5317, June 11, 1952]

§ 400.1003 Zones to be operated as public utilities.

(a) All rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments.

(b) Schedules containing all the rates and charges shall be published, posted, and filed with, and subject to the approval of the Board. Full instructions concerning the publication, posting, and filing of such schedules will be issued by the Board.[3] One copy of each tariff required to be filed with any State regulatory body shall also be filed with the Board.

(c) Where applicable, the operator of the zone will remain subject to the requirements of the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.) and to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.).

(Sec. 14, 48 Stat. 1001; 19 U.S.C. 81n)

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1004 Inspection of zones.

Representatives of the Board will inspect, from time to time, the operations of the zones for the purpose of informing the Board whether the provisions of the act and the regulations in this part are being met. The operators of the zones shall comply fully with the requirements of such representatives, and make available to them such records and reports as the representatives may find necessary for a proper and thorough inspection of zone activities.

§ 400.1005 Separability of regulations in event of invalidity.

If any provision of the regulations in this part, or the application thereof to any person or circumstances, be held invalid, the remainder of the regulations in this part and their application to other persons or circumstances shall not be affected thereby.

§ 400.1006 Changes in regulations.

Regulations issued pursuant to the provisions of the act may be amended, supplemented, suspended or revoked, from time to time, as may be deemed necessary. Regulations shall not be construed as conferring privileges or interests which may not be adversely affected by subsequent regulations or by any changes whatsoever in existing regulations.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.1007 Authority for publishing, posting, and filing of schedules of rates and charges.

Section 14 of the Act of June 18, 1934 (48 Stat. 998; 19 U.S.C. 81n), provides that "* * * all rates and charges for all services or privileges within the zone shall be fair and reasonable * * *", and § 400.1003(b) provides that "* * * full instructions concerning the publication, posting, and filing of such schedules will be issued by the Board * * *".

[Par. 1, Instr., Feb. 7, 1938]

§ 400.1008 Adoption and issuance of schedules.

In accordance with the authority contained in § 400.1007, the Foreign-Trade Zones Board on February 7, 1938, adopted and issued the following instructions concerning the publication, posting, and filing of schedules containing all the rules, regulations, rates and charges for all services and privileges within foreign-trade zones. Additional instructions, and an elaboration or extension of those set forth herein, may be issued from time to time.

[Par. 2, Instr., Feb. 7, 1938]

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[3] See §§ 400.1007 through 400.1013.

§ 400.1009 Definitions.

That there may be no misunderstanding the following definitions are to be followed in the preparation of the schedules:

(a) *Grantee.* The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted, in accordance with the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998 through 1003; 19 U.S.C. 81n).

(b) *Schedule.* The term "schedule" means a publication stating rates and charges of a foreign-trade zone, and all rules and regulations applying in connection therewith and to general operating procedure.

(c) *Publication.* Should be construed as the act of constructing, or compiling and publishing a schedule which will include all pertinent information in connection with the rates, charges, rules, and regulations applicable thereto within a foreign-trade zone, and also such other schedules as may be inaugurated from time to time.

(d) *Posting.* Should be construed as the act of posting all effective schedules within a foreign-trade zone, and the general offices of the grantee, in such a manner that they will be accessible to the public, and can be conveniently inspected. Requests may originate from the public for copies of effective schedules, and this also comes under the general heading of "posting" as such requests should be complied with to every reasonable degree.

(e) *Filing.* All schedules must be filed with the Foreign-Trade Zones Board and such other States or Federal regulating bodies as may subsequently exercise any jurisdiction in connection with the operation of foreign-trade zones. All original schedules so filed are, of course, considered as the effective schedules, unless otherwise cancelled or revised.

[Par. 3, Instr., Feb. 7, 1938]

§ 400.1010 Designation of agent for issuance of schedules.

(a) The obligation to compile and publish, post and file schedules naming rates, charges, rules and regulations, applying at foreign-trade zones is a direct responsibility of the grantee. The grantee should place such obligation and authority, through a power of attorney, with a member of its organization specifically designated to perform such work, thereby definitely fixing the responsibility for publishing, posting, and filing schedules on behalf of the grantee. The granting of such authority to a specifically designated person would ratify and confirm the lawful action of such an agent of the grantee with respect to the responsibility imposed by law in connection with publishing, filing, and posting of schedules. In other words, the granting of such a power of attorney to a designated person would serve the following purposes insofar as the grantee is concerned:

(1) Would give the person so designated the authority to publish, post and file schedules, and all revisions thereto on behalf of the grantee.

(2) Avoid duplication of this responsibility and possible conflict with respect to the material contained in schedules, by placing with one person the authority to carry out the provisions of the act with relation to publishing, posting and filing schedules.

(3) Would also place the responsibility for the unification and dissemination of information contained within schedules to the interested public, and the many other incidental details with regard to this important subject, upon the person granted the power of attorney.

(b) The granting of such authority to a specifically designated person could be limited in the following respects:

(1) By defining the period of time such power of attorney is to run.

(2) By stating the exact nature of responsibility for which the power of attorney is issued, for instance "to publish, post, and file schedules, and all incidental duties in relation thereto."

(c) From the above it will be seen that one of the main objectives to be accomplished thereby would be to limit the responsibility on behalf of the grantee to one person, a specifically designated authority, to handle all matters in relation to the publication, posting, and filing of schedules

Future developments of foreign-trade zones will undoubtedly reveal the numbers and kinds of schedules and revisions necessary to the conduct of such organizations.

[Par. 4, Instr., Feb. 7, 1938]

§ 400.1011 Uniformity of schedules.

In order that all original schedules and revisions embracing matters pertaining to foreign-trade zones, such as rates, charges, rules and regulations, and any additional schedules and revisions that may be subsequently issued, will be constructed as uniformly as possible, the following is prescribed:

(a) All schedules shall be compiled and published in loose-leaf form, both the original schedule and subsequent revised pages conforming to a size of approximately 8 inches wide by 11 inches long.

(b) Schedules and revised pages shall be plainly printed, mimeographed or reproduced by other similar durable process on paper of good quality.

(c) The loose-leaf pages of the schedule shall be printed upon one side only, and each page consecutively numbered, beginning with "original page No. 1." etc.

(d) A margin of not less than one (1) inch shall surround the schedule page, especially at the binding edge.

(e) No alteration in writing or erasure shall be made in any part of the schedule.

(f) A hard cardboard front and back cover shall be used in binding schedules, and allowance made for conveniently fastening and unfastening the schedule to permit insertion of revised pages from time to time.

(g) The front cover and back cover of schedules may be in any color which may be determined upon, but the pages within the schedule shall be white, at least commencing with original page number one up to and including the last page, and all revisions thereof.

[Par. 5, Instr., Feb. 7, 1938]

§ 400.1012 Construction of schedules.

All schedules should be constructed as simply as possible, but accuracy and comprehensiveness should not be sacrificed. The Board, therefore, instructs that the following general outline of the schedule be followed as closely as possible:

(a) *Title page.* The title page shall generally bear such items as:

(1) The name of the grantee or operator.

(2) The schedule number.

(3) Descriptive statement of the contents named within schedule.

(4) Location of zone.

(5) The date the schedule is issued and effective date.

(6) The name of the person by whom the schedule is issued.

This information may be given on the cover of the schedule as well as on the page constituting original page No. 1 of the schedule.

(b) *Administrative organization page.* On this page, which will form original page No. 2, shall be listed the public officials and managing officers connected directly with the operation of the zone.

(c) *Checking sheet for schedule.* This standard method of noting corrections and additions to the schedule shall be used and followed by the grantee. The checking sheet shall carry an explanation for its use to all who are in possession of the original schedule.

(d) *Table of contents.* The table of contents shall follow the general outline as given in this section and shall include all major references by pages.

(e) *Explanation of abbreviations and symbols.* A complete list of abbreviations and symbols used in the schedule shall be explained.

(f) *Definitions.* There shall be given definitions of all terms used in this schedule relating to rules, regulations, rates and charges, also of any terms relating to the physical construction of this schedule. Where the Foreign-Trade Zones Board has supplied definitions for terms to be used herein, those definitions shall be used.

(g) *Rules and regulations.* Special care should be taken in the compilation of rules and regulations that they may be complete and self-explanatory with respect to their general application. It is suggested that rules and regulations of general application be segregated from those of specific or special application. It is also suggested that rules and regulations be grouped in their application, that is, concerning carriers, concerning cargo, concerning persons, concerning rates and charges, etc.

(h) *Prohibited merchandise.* There shall be listed all merchandise which has been excluded from the privileges of the zone for any reason.

(i) *Rates and charges.* (1) Applying to carriers: Herein shall be listed all charges applicable to carriers, their owners or agents, in the following manner: Vessels: towage, dockage, loading and discharging, running lines, fumigation, etc. Rail cars: Switching charge, demurrage, etc. Motortrucks; property privilege, loading and unloading, etc.

(2) *Applying to cargo.* All rates and charges collectible by the grantee against cargo shall be listed in separate tariffs for each service. Thus, tariffs for wharfage, handling, demurrage, storage, extra services, manipulation, loading and unloading, high piling, rental of equipment, minimum charges, etc., shall each show the application of the tariff, space and labor rates, commodity and description necessary to apply the particular tariff, modifications of the tariff, and such other information necessary for the determination of rates and charges for a particular service.

[Par. 6, Instr., Feb. 7, 1938]

§ 400.1013 Additional instructions.

(a) Duplication should be avoided. A commodity once named within the schedule with all rates, charges, rules and regulations applying in connection therewith, will be considered as the effective tariff in force until subsequently revised in the form provided by means of revised pages.

(b) The Foreign-Trade Zones Board shall be furnished with the original and seven copies of all schedules.

(c) Changes or additions in the form of revised pages shall be submitted to the Foreign-Trade Zones Board within 3 days after such changes have been made.

(d) All supplementary information concerning the quotation of rates and charges for commodities not within the schedule shall be furnished the Foreign-Trade Zones Board within 10 days after such quotations are made. This is in addition to the construction of the schedule and should not be confused therewith.

(e) All items carried in the schedule shall be numbered in consecutive sequence.

[Par. 7, Instr., Feb. 7, 1938]

§ 400.1014 Requirements for accounts, records, and reports.

Zone grantees shall maintain their accounts in accordance with generally accepted principles of accounting, and in compliance with any requirements of Federal, State, or local governmental agencies having appropriate jurisdiction over the grantee. As to other records and reports, applicable provisions of the Uniform System of Accounts, Records, and Reports, approved by the Board on February 6, 1939, shall remain in effect, as modified by instructions issued by the Executive Secretary concerning preparation of Annual Reports dated July 6, 1964. Records kept under the System shall be retained for 5 years after the merchandise covered by such records has been forwarded from the zone.

[Order 86, 36 FR 24930, Dec. 24, 1971]

USE OF GOVERNMENT PROPERTY

§ 400.1100 Use of Government property.

If the title to or right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions, approved by the Board and such department or officer as may be agreed upon.

VIOLATIONS OF PROVISIONS OF ACT OR REGULATIONS

§ 400.1200 Fine imposed for violation of act or regulations.

In case of a violation of the act or of any regulation under the act by the grantee, any officer, agent, or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than $1,000

Each day during which a violation continues shall constitute a separate offense.

(Sec. 19, 48 Stat. 1003, 19 U.S.C. 81s)

§ 400.1201 Revocation of grant.

In the event of repeated willful violations by the grantee of any of the provisions of the act, the Board may revoke the grant after 4 months' notice to the grantee and after affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board, together with the decision reached thereon.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

§ 400.1202 Procedure for revocation.

In the conduct of any proceeding for the revocation of a grant the Board may compel the attendance of witnesses, the giving of testimony, and the production of documentary evidence; and for such purposes may invoke the aid of the district courts of the United States.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

§ 400.1203 Appeal from revocation order.

An order issued by the Board revoking the grant shall be final and conclusive, unless within 90 days after its service the grantee appeals to the circuit court of appeals for the circuit in which the zone is located filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board, and it shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in the proceedings held before it, under section 18(c) of the act (48 Stat. 1002 18 U.S.C. 81r(c)), the charges, the evidence, and the order revoking the grant. The testimony and evidence aken or submitted before the Board, duly certified and filed as a part of the ecord, shall be considered by the ourt as the evidence in the case.

(Sec. 18, 48 Stat. 1002, as amended; 19 U.S.C. 81r)

Rules of Procedure and Practice

§ 400.1300 Headquarters.

The headquarters of the Board shall be the Department of Commerce, Washington, D.C.

§ 400.1301 Executive Secretary of the Board.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, shall appoint an Executive Secretary of the Foreign-Trade Zones Board. As principal operating official of the Board, the Executive Secretary shall:

(a) Represent the Board in all administrative, regulatory, and operational matters within the purview of the Board.

(b) Direct the execution of the orders of the Board.

(c) Initiate recommendations to the Board for overall administration of the Foreign-Trade Zones Act.

(d) Conduct periodic inspection of the zones.

(e) Provide information and advisory assistance to Federal, State, and Municipal agencies, to the business community, and to the general public.

(f) Arrange meetings of the Board and its Committees of Alternates, including provisions for minutes and necessary records.

(g) Maintain custody of the seal, records, files, and correspondence of the Board.

(h) Appoint staff members, including an Assistant Executive Secretary, who may act for him in his absence.

(i) Authorize in appropriate cases amendments to applications filed with the Board, except that no substantive changes may be authorized after notice of a public hearing, or an invitation for comments, has been published.

(j) Approve in appropriate cases, with the prior recommendations of the District Director of Customs and the District Engineer, requests for minor modifications to zone boundaries which will not result in an expansion of zone operations.

(k) Approve in appropriate cases, with the prior approval of the District Director of Customs, requests to permit the use of alternate fencing to that specified in § 400.403.

(l) Perform such other duties as may be required by the Secretary of Commerce, as Executive Officer of the Board, and as the Board may direct.

[Order 74, 32 FR 13714, Sept. 30, 1967, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1302 Committee of Alternates.

Each member of the Board shall designate an alternate to serve on a Committee of Alternates. The alternate of the chairman of the Board shall be chairman of the committee. The committee shall review and prepare all matters for presentation to the Board, shall hold such hearings and rehearings as may be directed by the chairman of the Board, and shall perform all other duties designated by the Board except such as are specifically imposed by law on the Board. The committee shall meet at the call of its chairman.

§ 400.1303 Transaction of Board business.

(a) Meetings of the Board will be held on call of the Chairman. Two members of the Board shall be necessary for a quorum.

(b) At the option of the Chairman, the Board may conduct its business, including voting, without an actual meeting being held, provided that no Board member has requested a meeting. When business is so conducted, Board members may communicate their views and recommendations by such means as telephone and memorandum, but the votes of members shall be made in writing and submitted to the Executive Secretary for entry in the voting record.

(c) Final votes of each Board member, including dissenting votes, will be recorded and the voting record shall be available for public inspection.

[Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1304 Order of business.

The order of business at Board meetings shall be as follows:

(a) Reading of minutes of preceding meeting.

(b) Report of secretary of Board.

(c) Amendments to regulations or rules.

(d) Applications for grants or amendments to grants.

(e) Consideration of matters connected with operation, maintenance, or administration of zones.

(f) Miscellaneous business.

(g) Adjournment.

§ 400.1305 Authorization for hearings.

The Board, or its Chairman, may authorize hearings or rehearings. Such hearings will ordinarily be held before the Committee of Alternates. The Examiners Committee is authorized to hold hearings as provided in § 400.1309.

[Regulations, June 29, 1935, as amended by Order 86, 36 FR 24930, Dec. 24, 1971]

§ 400.1306 Orders of Board.

Orders of the Board shall be made of record, numbered serially, and published from time to time for the information and guidance of all concerned.

§ 400.1307 Applications.

Upon receipt of an application, the Executive Secretary of the Foreign-Trade Zones Board will designate an examiner who will investigate the application and accompanying exhibits for compliance with the provisions of §§ 400.600 to 400.608.

[Order 47, 23 FR 5417, July 17, 1958]

§ 400.1308 Examiners Committee.

If the application and accompanying exhibits are in order, the Executive Secretary of the Foreign-Trade Zones Board will appoint an Examiners Committee and designate a chairman. This committee will consist of the examiner appointed by the Executive Secretary who has examined the application as provided in § 400.1307, the Regional Commissioner of Customs or his designee and the District Engineer in whose districts the proposed zone is to be located. The committee will then make a thorough investigation of the application and report its findings to the Board.

[Order 47, 23 FR 5417, July 17, 1958, as amended by Order 74, 32 FR 13715, Sept. 30, 1967]

§ 400.1309 Hearings before Examiners Committee.

In conducting its investigation the Examiners Committee is authorized to hold hearings and take evidence as provided in §§ 400.1316 through 400.1321.

§ 400.1310 Submission of further evidence.

Should the report of the Examiners Committee be unfavorable, notice will be sent to the applicant, who will be permitted to apply for permission of the Board to present further evidence in support of his application either orally, in writing, or both.

§ 400.1311 Rehearing on application.

Should the request of the applicant to submit further evidence be granted, the applicant will be notified and, if a hearing is desired, a date fixed therefor before the Committee of Alternates.

§ 400.1312 Action of Board on application.

After the Board's consideration of the application is completed, unless further information is required by the Board, the grant will be made or denied.

§ 400.1313 Payment for inspection.

The Board shall specify, and applicants and grantees shall pay, the cost of inspection of construction. Prior to the issuance of a grant, the applicant shall deposit promptly with the district engineer a certified check in an amount specified as prescribed above, covering such cost. Certified checks in amounts specified by the Board will also be required to be deposited promptly by grantees with the district engineer covering costs of subsequent inspections of major alternations. In the event the amount originally specified is insufficient to pay for the cost of inspection, the Board shall specify the additional amount or amounts required, which shall be paid promptly by the applicant or grantee, as the case may be. Such funds shall be carried in a special deposit account by the district engineer in accordance with existing law and regulations. If certified checks, which have been deposited, are in amounts in excess of the cost of supervision of construction, the district engineer shall refund such excess.

§ 400.1314 Construction of zone.

Construction will be under the supervision of the Secretary of the Army and Chief of Engineers; such supervision shall be exercised by the District Engineer who shall enforce compliance with the terms of the grant.

[Order 17, 14 FR 3671, July 2, 1949]

§ 400.1315 Evidence.

In its discretion, and upon its own motion or upon the motion of any interested party, the Board may give an opportunity to, or require, any party to any proceedings before the Board to present documentary or other written or oral evidence bearing upon any application, declaration, protest, petition, or complaint made to the Board. The Board may order that hearings be held for the purpose of taking testimony or receiving records not under the control of a party to proceedings before the Board, or for the purpose of taking testimony or producing records in connection with the establishment, operation, or maintenance of a zone, or with the conduct of any investigations appropriate to the administration of the act.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1316 Object of hearing.

The object of such hearing is to inform interested parties concerning the matter at issue and to give them an opportunity to express their views frankly, fully, and publicly relative thereto.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1317 Notice of hearing.

When the Board of Examiners Committee of the Board deems it advisable to hold a local hearing, notice of such hearing should be sent to all interested parties in time for them to be present in person or to be represented at the hearing, and a copy of the notice should be furnished local newspapers. The notice should state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place. For the accuracy of the record, all important facts and arguments should be submitted in writing. As soon as the date and place for a hearing have been designated, the official or Examiners' Committee should immediately advise the Board direct so that it may have available full information on the proceedings.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1318 Procedure at hearing.

The following general procedure will govern the conduct of hearings:

(a) Minutes of the proceedings will be made, and when deemed advisable, will be taken stenographically.

(b) A complete copy of the notice and a record of the names and addresses of all parties on whom served and the manner of service (whether by mail, telegraph, telephone, etc.), should be retained and made a part of the record.

(c) The presiding officer will impress upon all interested parties and will also specifically state at the commencement of the proceedings: first, the special purpose of the hearing; second, that it is desired to have a frank and full expression of the views of all interested parties and as complete a statement as possible of all information bearing upon the question at issue; third, that the Board will give full weight to all evidence and arguments presented at the hearing, and that all pertinent material which the parties wish considered should be brought out at the hearing; fourth, that later ex parte evidence and arguments are not desired by the Board unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing.

(d) The presiding officer should read aloud such parts of the act and of the rules and regulations adopted by the Board as bear on the matter at hand. He should also read such other important papers bearing on the case, or extracts therefrom, as may be necessary for a full understanding of the status of the case and the data before the Board.

(e) The names and addresses of all parties of interest present or represented at the hearing will be recorded.

(f) The presiding officer will then invite and conduct a thorough and candid discussion of the case in all its bearings.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1319 Adjournment of hearing.

If it is alleged by any person that more evidence exists which could not be properly prepared in time for the hearing, the presiding officer will, at his discretion, either adjourn the hearing for a reasonable period, or may delay transmitting his report until after the receipt of such evidence and the expiration of a reasonable period for its examination by other interested persons. In such cases, definite statements as to the amount of time desired should be required. If no further hearing is held, it should be required that any additional evidence be submitted in typewritten or printed form, and the party submitting it should be required to serve a copy thereof on such other parties in interest as appeared at the hearing and to furnish proof of such service for the record.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1320 Record of proceedings.

The record of the proceedings should be made in quadruplicate, 3 copies for the Board and 1 for the office of the presiding officer. The record should be accompanied by a copy of the notice and list of those present, briefs or exhibits submitted in the case, and the recommendations of the officer or committee conducting the hearing on the points raised at the hearing. All of the above papers should be properly marked for reference and when possible bound together and submitted as a single exhibit.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

§ 400.1321 Additional rules of practice.

Additional rules of procedure and practice in formal proceedings under the act, and of procedure in formal and informal proceedings, in elaboration or extension of those set forth herein, may be issued from time to time.

[Regulations, June 29, 1935. Redesignated by Order 29, 17 FR 5317, June 11, 1952]

PUBLIC INFORMATION

SOURCE: Order 74, 32 FR 13715, Sept. 30, 1967, unless otherwise noted.

§ 400.1400 Policy.

It is the policy of the Foreign-Trade Zones Board, consistent with the purposes of the Foreign-Trade Zones Act and the role of the Board as a regulatory agency, to furnish the public with information pertaining to the establishment, operation and administration of foreign-trade zones in the United States, except that such information as is exempted from the requirement for disclosure of 5 U.S.C. 552, as amended, ordinarily will not be made available to any person.

§ 400.1401 Public information activities.

The Executive Secretary of the Board shall conduct the following public information activities of the Board:

(a) Preparation and release of material published by or for the Board, including public announcements, items for publication in the FEDERAL REGISTER, news releases, and reports.

(b) Clearance for release of informational material from other agencies referred to the Board for review.

(c) Release of general information pertaining to Board activities, rules and regulations and, at his discretion, information contained in Board records as necessary to further the regular information dissemination activities of the Board.

(d) Development and direction of measures to provide the international business community with information pertaining to the establishment, operation and administration of U.S. Foreign-Trade Zones.

§ 400.1402 Availability of materials for inspection and copying.

(a) The Board shall utilize the facilities and services of the Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, DC 20230, to make available for public inspection and copying the materials required to be made available to the public by 5 U.S.C. 552(a)(2).

(b) Rules and procedures prescribing the hours of operation, location, fees, and other requirements for public inspection of records through the central facility are contained in Part 4 of this title.

§ 400.1403 Requests for identifiable records.

(a) The procedures of this section are applicable only to those records not customarily available to the public as part of the regular information activities of the Board.

(b) The Board shall utilize the facilities and services of the Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, DC 20230, to make available for public inspection and copying identifiable records which have been determined to be disclosable pursuant to 5 U.S.C. 552(a)(3).

(c) Rules and procedures prescribing the hours of operation, location, fees, and other requirements for public inspection of records through the central facility are contained in Part 4 of this title.

§ 400.1404 Determinations of availability of records.

(a) In accordance with the rules, regulations, and procedures governing the operation of the Central Reference and Records Inspection Facility of the U.S. Department of Commerce, a request for the determination of availability of a record of the Board will be referred to the Executive Secretary of the Board who shall initially determine:

(1) Whether the requested record can be identified on the basis of information contained in the request. If the record cannot be identified the request shall be returned to the person who

initiated it and he shall be advised why the record is not identifiable and what additional clarification, if any, he may submit to assist in the identification of the record.

(2) Whether the record, if identifiable, is still in existence or has been destroyed as provided by law, or is not in the possession of the Board. If the record no longer exists, the person who initiated the request will be notified, with the reason stated. If the record is not in the Board's possession and its existence is not otherwise reasonably ascertainable, the person who initiated the request shall be so notified. If the requested record is the exclusive or primary concern of another agency, the request for such record shall be promptly referred to that agency for further action under its rules, and the person who initiated the request shall be promptly informed of this referral.

(b) If a requested record is identifiable and is subject to determination of availability on the basis of disclosure requirements, the request shall be reviewed by the Executive Secretary of the Board to initially determine its availability. If he determines, as provided by law, that the record is not to be made available to the requesting person, said party shall be informed in writing of the specific reason(s) why the record is not being disclosed.

(c) If an identifiable record is to be made available for public inspection and copying, the person who requested access to the record shall be promptly advised of the availability of the record.

§ 400.1405 Requests for reconsideration of nonavailability.

(a) Any person whose request to inspect a record has been denied because the record was not to be made available for stated reason(s), may request a reconsideration of the initial denial in accordance with procedures set forth in Part 4 of this title.

(b) The decision upon such review shall be made by the Chairman of the Foreign-Trade Zones Board, and shall be based upon the original request, the denial, and any written argument submitted by the person requesting the review.

(c) The decision upon review shall be promptly made in writing and transmitted to the person requesting the review. If the decision is wholly or partly in favor of said person, the requested record to such extent shall be made available for inspection in accordance with § 400.1404(c). To the extent that the decision is adverse to the request, the reason(s) for the denial shall be stated.

(d) A decision upon review completed as provided herein shall constitute the final decision and action of the Board as to the availability of a requested record, except as may be required by court proceedings initiated pursuant to 5 U.S.C. 552(a)(3).

§ 400.1406 Security information.

Nothing in the regulations in §§ 400.1400 through 400.1406 should be construed to modify or supersede laws, rules, and regulations governing the release of information classified as security information.

CHAPTER VII—BUREAU OF EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

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SUBCHAPTER A—NATIONAL SECURITY INDUSTRIAL BASE REGULATIONS

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

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AUTHORITY: Secs. 101-103, 701-707, 709, and 713, Defense Production Act of 1950, Pub. L. 81-774, 64 Stat. 798, as amended (50 U.S.C. app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 18 FR 4939, 3 CFR 1979 Comp. p. 114, as amended; E.O. 12148, 44 FR 43239, 3 CFR 1979 Comp. p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; DMO-12, 44 CFR 329; and DMO-13, 44 CFR 330.

SOURCE: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

Subpart A—Purpose

§ 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to assure domestic energy supplies for national defense needs.

(b) This regulation consolidates, simplifies, and revises the Defense Materials System and the Defense Priorities System regulations, directions, and orders. The Defense Priorities and Allocations System (DPAS) helps to keep current national defense programs on schedule and provides an operating system that can be rapidly expanded in a national emergency.

(c) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as Subpart B—Overview. The full text of the DPAS is found in Subparts D through L.

Subpart B—Overview

§ 700.2 Introduction.

(a) The Federal Emergency Management Agency authorizes certain national defense programs for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "authorized programs." A complete list of currently authorized programs is provided at Schedule I.

(b) To ensure the preferential treatment of certain contracts and orders for authorized programs, the Department of Commerce administers the DPAS.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols indicate which authorized program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

§ 700.4 Controlled materials.

(a) Federal central management of certain key materials, designated "controlled materials", has been essential in the past to effective industrial mobilizations. Accordingly, special rules are maintained in peacetime to provide an operating mechanism that can be rapidly expanded during a national emergency to meet increased defense and other essential needs. Currently, the controlled materials are steel, copper, aluminum, and nickel alloys.

(b) Under the controlled materials program, the Department of Commerce requires suppliers of controlled materials to accept rated orders up to a specified quantity of material during a given period of time. This quantity is called a "set-aside". This provision ensures that the material will be available when rated orders are placed. In addition, the system ensures that controlled materials producers are treated equitably, for after the set-aside quantity levels have been reached, controlled materials producers may generally reject additional rated orders. These orders would then be filled by other controlled materials producers who had not exhausted their set-aside requirement.

(c) In time of national emergency, the level and scope of the controlled materials program may be greatly expanded to ensure the necessary allocation of materials and in order to direct general industrial activity toward supporting the requirements of the emergency.

(d) Certain other items, in addition to the controlled materials, have critical importance to national defense programs. From time-to-time, special rules, similar to those for controlled materials, may be needed to manage those materials.

(e) If items become scarce and critical and the requirements of the national defense cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, special rules may be established under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

§ 700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

§ 700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

§ 700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

Subpart C—Definitions

§ 700.8 Definitions.

The following definitions pertain to all sections of the regulation:

"Authorized program." A program approved by the Federal Emergency Management Agency for priorities and allocations support under the Defense Production Act.

"Construction." The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

"Controlled materials." The various shapes and forms of steel, copper, aluminum, and nickel alloys, whether new, remelted, rerolled or redrawn, as specified in Schedule II, and as defined in Schedule III.

"Controlled materials suppliers." All persons, including producers, distributors, brokers, importers and exporters engaged in the sale or resale of controlled materials.

"Delegate Agency." A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support authorized programs.

"Defense Production Act," the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*).

"Distributors of controlled materials." Those persons (including warehouse operators or jobbers, but not retailers) engaged in stocking controlled materials at locations regularly maintained for their sale or resale in the form or shape as received, or after performing such operations as cutting to length or shape, slitting, shearing, or sorting and grading.

"Further conversion." The further processing of controlled materials by a processor of such materials.

"Item." Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

"Lead time." The period of time specified in this regulation for the receipt of orders for controlled materials by a supplier in advance of the first day of the month in which shipment is required.

"Maintenance and repair and operating supplies (MRO)":

(a) "Maintenance" is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) "Repair" is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) "Operating supplies" are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

"Minimum mill quantity." The minimum quantity of a controlled material that may be obtained from a producer for shipment at any one time to any one destination.

"Official action." An action taken by Commerce under the authority of the Defense Production Act and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

"Person." Any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States Government or any other government.

"Production equipment." Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of $2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

"Rated order." A prime contract, a subcontract, or a purchase order in support of an authorized program issued in accordance with the provisions of this regulation.

"Set-aside." The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

Subpart D—Industrial Priorities

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in Title I of the Defense Production Act have been delegated to the Director of the Federal Emergency Management Agency (FEMA), who, in turn, has delegated these authorities with respect to industrial resources to the Secretary of Commerce. FEMA retains the overall policy and coordinating functions for this delegated authority.

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Industrial Resource Administration. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for authorized programs. Copies of these Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX".

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. For resolution of conflicts among rated orders of equal priority, see § 700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 700.62.)

(b) *Program identification symbols.* Program identification symbols indicate which authorized program is being supported by a rated order. The list of authorized programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

§ 700.12 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO-A1, DX-A4, DO-H1);

(b) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. A "requirements contract" bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders or "calls". Such "calls" must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original "requirements contract";

(c) The signature of an individual authorized to sign rated orders for the person placing the order. The signature certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

(d) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700).

§ 700.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If the rated order is for a controlled material in an amount below the minimum mill quantity established in Schedule II, and the person placing the order is not willing to buy the minimum quantity;

(6) If the rated order is for a controlled material and is not received by the controlled materials producer within the time frame specified in Schedule I;

(7) If the applicable set-aside has been reached or would be exceeded by acceptance, except that a DX order must be accepted without regard for such set-aside;

(8) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act [See § 700.75].

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order in writing within ten working days after receipt of a DO rated order and within five working days after receipt of a DX rated order. The person must give reasons in writing for the rejection.

(2) If a person has accepted a rated order and later discovers that, due to circumstances beyond the person's control, deliveries will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment date. If notification is given verbally, written confirmation must be provided within five working days.

§ 700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) If a person cannot fill all the rated orders of equal priority status received on the same day, the person must accept those orders which can be filled which have the earliest delivery dates. For example, the person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. For those orders which cannot be filled on time, the supplier must inform the customer within the time limits set forth in § 700.13(d), of the earliest date on which delivery can be made and offer to accept the order on the basis of that date.

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 700.17(b).

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or is changed or cancelled, all suppliers must be promptly notified in writing.

§ 700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order (except as provided in § 700.31(d)—Controlled materials program identification symbols). A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1) (not applicable to controlled materials producers).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1), except as provided in § 700.31(d) (Controlled materials program identification symbols).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated orders provided that the rated quantities are identified separately and are also contained in a separate rated order which conforms to the requirements of § 700.12 (Elements of a rated order). In addition to identifying clearly the rated quantities, the combined purchase order must contain a statement that the rated quantities are contained in a separate rated order placed in accordance with this regulation. Wherever possible, the separate rated order must be physically attached to the combined purchase order. A supplier must give preferential treatment to the rated quanitities of the combined order, if necessary. A supplier may not use the authorities of this regulation to give preferential treatment to the unrated portion.

(2) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than $5,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by Commerce (see § 700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 700.53.]

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Order 10480, as amended, to other agencies, and, thus, the provisions of this regulation are not applicable to them. These items include:

(i) Petroleum, gas, solid fuel, and electric power and all other forms of energy (Department of Energy);

(ii) Food and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture);

(iii) Civil transportation and the movement of persons and property by all modes (Department of Transportation);

(iv) Minerals (Department of Interior);

(v) Water (Department of Defense—U.S. Army Corps of Engineers);

(vi) Housing facilities (Department of Housing and Urban Development);

(vii) Health facilities (Department of Health and Human Services); and

(viii) Radioisotopes, stable isotopes, source material, and special nuclear material, produced in Government-owned plants or facilities operated by or for Department of Energy (Department of Energy).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items included in the categories listed above has been clarified by Interagency Memoranda of Understanding. Copies of these Memoranda are provided for information at Appendix II.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Communication services
Copper raw materials (as defined in Schedule III)
Crushed stone
Gravel
Sand
Scrap
Slag
Steam heat, central
Waste paper

Subpart E—Industrial Priorities for Energy Programs

§ 700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical and essential supplies of materials and equipment by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830, or from the Procurement and Assistance Management Directorate, Department of Energy, Attn: MA 932, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials or equipment involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials or equipment are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the material or equipment in a time frame consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of material or equipment are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of authorized programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR Part 216.

Subpart F—The Controlled Materials

§ 700.30 Management of the controlled materials.

(a) The controlled materials are steel, copper, aluminum, and nickel alloys in the shapes and forms listed in Schedule II and defined in Schedule III. These materials are basic industrial resources necessary for both authorized defense programs and for general industrial activity. Federal management of these four materials assures the timely availability of the materials to meet current authorized program requirements; assures the equitable distribution of requirements among the suppliers of the materials and provides a flexible and expandable system capable of directing general economic and industrial activity during times of emergency.

(b) Before controlled materials can be used for authorized programs, the Delegate Agencies must obtain specific approval, known as an allotment, from the Federal Emergency Management Agency (FEMA). Accordingly, the Delegate Agencies submit to FEMA requirements for the controlled materials necessary to support their authorized programs. After reviewing the available supply of the materials and other national security, economic and policy considerations, FEMA approves the use of specific quantities of controlled materials by issuing allotments to each Delegate Agency. (Special controlled materials provisions applicable to the Delegate Agencies are found in the Delegations of Authority and the

U.S.-Canadian Memorandum of Understanding appended to this regulation.)

(c) To assure the timely availability of controlled materials, the Department of Commerce manages their supply and distribution by requiring producers and distributors of controlled materials to set-aside or reserve space in their order books for the receipt of rated orders. This process is described in greater detail in the following section.

§ 700.31 Specific rules for controlled materials suppliers and users.

(a) *Rated orders.* Rated orders are used to obtain controlled materials needed for authorized programs. Such orders must comply with the requirements of § 700.12 (Elements of a rated order). In addition, a rated order for controlled materials placed with a producer must be in sufficient detail to permit entry on mill schedules.

(b) *Set-asides.* (1) Controlled materi-
ls suppliers are issued set-asides by
yp and shape of controlled material
s provided in the following para-
raphs. Each supplier is required to
ccept all rated orders received up to
he set-aside level. The supplier may
eject DO rated orders after the set-
side quantity has been filled except
hat the supplier must accept all DX
ated orders regardless of the set-aside
evel.

(2) A person who has had a DO
ated order rejected because a set-
side has been filled, must attempt to
lace the rated order with other con-
rolled materials suppliers whose set-
sides are not filled. If still unable to
lace the rated order, the person
hould request special priorities assist-
nce (see Subpart H).

(3) *Steel controlled materials.* (i) A
t-aside is applicable to each steel
ontrolled materials producer who re-
eives a written set-aside notification
rom Commerce.

(ii) Any steel controlled materials
roducer who has not received a set-
side notification must accept, in ac-
rdance with the provisions of this
egulation, all rated orders received,
ut may receive a set-aside by apply-
g in writing to Commerce.

(iii) The set-aside is a specified monthly quantity based on average monthly shipments during a specific base period.

(4) *Copper controlled materials.* (i) Set-asides are applicable to all copper controlled materials producers.

(ii) The monthly set-aside for each copper controlled materials producer is calculated by multiplying the producer's set-aside base by the appropriate set-aside percentage for each product. The set-aside percentage and set-aside base are contained in Schedule IV.

(5) *Aluminum controlled materials.* (i) A set-aside is applicable to each aluminum controlled materials producer who receives a written set-aside notification from Commerce.

(ii) Any aluminum controlled materials producer who has not received a set-aside notification must, in accordance with the provisions of this regulation, accept all rated orders received, but may receive a set-aside in writing by applying in writing to Commerce.

(iii) The set-aside for aluminum ingot and aluminum molten metal is calculated based on the average monthly production capacity during a specific base period.

(iv) The set-aside for all other aluminum controlled materials is calculated based on the average monthly shipments during a specific base period.

(6) *Nickel alloys controlled materials.* (i) Set-asides are applicable to all nickel alloys controlled materials producers.

(ii) The monthly set-aside for each nickel alloys controlled materials producer is calculated by multiplying the producer's set-aside base by the appropriate set-aside percentage for each product. The set-aside percentage and set-aside base are contained in Schedule V.

(c) *Order books and product lead times.* (1) Each controlled materials producer must open its order books for the acceptance of DO rated orders at least 45 days prior to the commencement of the applicable minimum lead times provided in Schedule II for the various shapes and forms of controlled materials.

(2) When order books are open, a controlled materials producer must

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accept all rated orders received until the minimum lead time shown in Schedule II is reached or until the set-aside level is reached.

(3) Once the minimum lead time is reached, a controlled materials producer may devote remaining capacity to unrated orders, even if the set-aside has not been filled. However, the producer must accept all DX rated orders without regard to lead time. If unable to make delivery by the required date, the producer must offer to accept the order in accordance with § 700.13.

(d) *Controlled materials program identification symbols.* (1) A controlled materials producer must use the program identification symbol H2 on all rated orders to obtain production materials or to replace inventories used to fill rated orders except for materials for further conversion.

(2) A controlled materials producer must use the program identification symbol H3 on rated orders to obtain controlled materials for further conversion needed for production or inventory replacement.

(3) A controlled materials distributor must use the program identification symbol H4 on rated orders to obtain controlled materials needed to fill rated orders, or to replace in inventory, controlled materials used to fill rated orders.

(e) *Controlled materials shipments and requirements data.* (1) Controlled materials producers and distributors are required to maintain and submit to Commerce upon request, data on shipments against rated and unrated orders and on related activities [OMB Nos. 0625-0107 (Recordkeeping), 0625-0011 (Copper), 0625-0016 (Aluminum), 0625-0017 (Steel), and 0625-0021 (Nickel Alloys)].

(2) Persons performing against rated orders must provide, upon request of the appropriate Delegate Agency or the prime contractor, data on requirements for controlled materials needed to fill rated contracts for items manufactured to authorized program specifications or used in construction for authorized programs [OMB Nos. 0625-0107 (Recordkeeping) and 0625-0013 (Controlled Materials Requirements—Production, Construction, or Research and Development)]. Prime contractors may request this information from their subcontractors only when needed to satisfy a request for requirements data from a Delegate Agency.

Subpart G—Critical Items

§ 700.40 General provisions.

(a) From time-to-time Commerce may determine that certain items have a critical importance to industrial production with respect to the national defense and authorized programs. Special rules for such items are set forth in this subpart.

(b) Commerce may establish special rules as needed to ensure that critical items are available to authorized programs in a timely fashion and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items.

§ 700.41 Metalworking machines.

(a) "Metalworking machines" include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of $2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines
Boring machines
Broaching machines
Drilling and tapping machines
Electrical discharge, ultrasonic and chemical erosion machines
Forging machinery and hammers
Gear cutting and finishing machines
Grinding machines
Hydraulic and pneumatic presses, power driven
Machining centers and way-type machines
Manual presses
Mechanical presses, power driven
Milling machines
Miscellaneous machine tools
Miscellaneous secondary metal forming and cutting machines
Planers and shapers
Polishing, lapping, boring, and finishing machines
Punching and shearing machines
Riveting machines
Saws and filing machines
Turning machines, lathes, including automatic
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form ITA-999 (OMB control number 0625-0015) to the local contract administration representative. Form ITA-999 may be obtained from the Delegate Agency representative, any Commerce District Office, or from the Department of Commerce. A sample Form ITA-999 is attached at Appendix III.

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

(1) Production or construction equipment;

(2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (*e.g.*, Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.*, the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance will not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of authorized programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the *U.S.-Canadian Statement of Principles for Economic Cooperation* (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Department of Supply and Services on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at Appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, they should contact the Canadian Department of Supply and Services for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applyng to the Canadian Department of Supply and Services in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Department of Supply and Services. The Department of Supply and Services will forward appropriate requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items n Canada must submit a request through the Delegate Agency to Commerce on Form ITA-999. Commerce will forward appropriate requests to the Canadian Department of Supply and Services.

(c) *Foreign nations.* (1) Any person n a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

Subpart I—Official Actions

§ 700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in § 700.71(b).

§ 700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 700.51.

§ 700.62 Directives.

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§ 700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J—Compliance

§ 700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or an official action. Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in § 700.74 of this regulation.

§ 700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Assistant General Counsel for International Trade, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willfull violation of the Defense Production Act, this regulation, or an official action.

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or sections 705 or 707 of the Defense Production Act, this regulation, or an official action is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Except as provided in (b) below, the maximum penalties provided by the Defense Production Act are a $10,000 fine, or one year in prison, or both.

(b) Willful refusal to furnish any information or reports required by Commerce under section 705 of the Defense Production Act, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Maximum penalties provided by the Defense Production Act are a $1,000 fine, or one year in prison, or both.

(c) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(d) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

§ 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

Subpart K—Adjustments, Exceptions, and Appeals

§ 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Industrial Resource Administration, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Industrial Resource Administration.

(d) A decision of the Office of Industrial Resource Administration under this section may be appealed to the Assistant Secretary for Trade Administration, U.S. Department of Commerce. (For information on the appeal procedure, see § 700.81.)

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Industrial Resource Administration under § 700.80, may appeal to the Assistant Secretary for Trade Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Industrial Resource Administration. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Trade Administration.

(e) When a hearing is granted, the Assistant Secretary for Trade Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Trade Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Trade Administration.

(h) The decision of the Assistant Secretary for Trade Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart L—Miscellaneous Provisions

§ 700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 700.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation (OMB control number 0625-0107) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in § 700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

§ 700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or liability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 377-4506.

SCHEDULE I TO PART 700—AUTHORIZED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been authorized by the Federal Emergency Management Agency for priorities and allocations support under this regulation. They have equal preferential status.

The Department of Commerce has authorized the Delegate Agencies to use this regulation in support of those programs assigned to them, as indicated below.

Program Identification Symbol	Authorized Program	Delegate Agency
	Defense Programs	
A1	Aircraft	Department of Defense and Associated Agencies [1]
A2	Missiles	Do.
A3	Ships	Do.
A4	Tank—Automotive	Do.
A5	Weapons	Do.

Program Identification Symbol	Authorized Program	Delegate Agency
A6	Ammunition	Do.
A7	Electronic and communications equipment	Do.
B1	Military building supplies	Do.
B8	Production equipment (for defense contractor's account)	Do.
B9	Production equipment (Government owned)	Do.
C2	Department of Defense construction	Do.
C3	Maintenance, repair and operating supplies (MRO) for Department of Defense facilities.	Do.
C8	Controlled materials for Defense Industrial Supply Center (DISC)	Do.
C9	Miscellaneous	Do.
	International Defense Programs	
	Canada	
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Do.
D3	Canadian atomic energy program	Do.
	Other Foreign Nations	
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada	Do.
G3	Foreign nations (other than Canada) production and construction	Do.
	Co-Production	
J1	F-16 Co-Production Program	Departments of Commerce and Defense.
	Atomic Energy Programs	
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair and operating supplies (MRO)	Do.
E3	Privately owned facilities	Do.
	Other Energy Programs	
F1	Exploration, production, refining and transportation	Department of Energy.
F2	Conservation	Do.
F3	Construction and Maintenance	Do.
	Other Defense, Energy and Related Programs	
H1	Certain combined orders (see § 700.17(c))	Department of Commerce.
H2	Controlled materials producers	Do.
H3	Further converters (controlled materials)	Do.
H4	Distributors of controlled materials	Do.
H5	Private domestic production	Do.
H6	Private domestic construction	Do.
H7	Maintenance, repair and operating supplies (MRO)	Do.
K1	Federal supply items	General Services Administration.
N1	Approved civil defense programs	Federal Emergency Management Agency.

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[1] Department of Defense agencies are: Army, Navy (including Coast Guard), Air Force, Defense Logistics Agency, and National Security Agency. Associated Agencies of the Department of Defense include Central Intelligence Agency, Federal Aviation Administration, and National Aeronautics and Space Administration.

SCHEDULE II TO PART 700—CONTROLLED MATERIALS

Controlled Materials [1]	Minimum quantity* (net tons, except as specified)		Minimum number of days**			
	Carbon [3]	Alloy [3]	Carbon	High-strength low-alloy	Stainless	Alloy [1]
Steel						
Bar, bar shapes (including light shapes):						
Bar, hot-rolled stock for projectile and shell bodies [4]	(2)	(2)	45	75		[5] 75
Bar, hot-rolled, other (including light shapes):						
Round bars up to and including 3 inches, and squares, hexagons, half rounds, ovals, etc., of approximately equivalent section area	5	(2)	[5] 45	[5] 75	90	[5] 75
Round and square bars over 3 inches, but less than 8 inches	15	(2)	[5] 45	[5] 75	90	[5] 75
Bar-size shapes (angles, tees, channels, and zees under 3 inches)	5	(2)	[5] 45	[5] 75	90	[5] 75
Bar, reinforcing (straight lengths, as rolled)	5		45			75
Bar, cold finished	5	(2)	[5] 75	[5] 105	105	[illegible]
Sheet, strip (uncoated and coated):						
Sheet, hot-rolled	5	(2)	45	75	90	75
Sheet, cold-rolled	5	(2)	45	75	105	[illegible]
Sheet, galvanized	(2)		45			
Sheet, all other coated	5		45			
Sheet, enameling	5		45			
Roofing, galvanized, corrugated, V-crimped channel drains	(2)		45			
Ridge roll, valley, and flashing	(2)		45			
Siding, corrugated and brick	(2)		45			
Strip, hot-rolled	(2)	(2)	45	75	90	75
Strip, cold-rolled	(2)	(2)	45	75	105	[illegible]
Strip, galvanized	(2)		[6] 45			
Electrical sheet and strip	5		[7] 45			
Tin mill black plate (pounds)	12,000		45			
Tin plate, hot-dipped (pounds)	12,000		45			
Ternes, special coated manufacturing (pounds)	10,000		45			
Tin plate, electrolytic (pounds)	12,000					
Electrolytic chromium coated steel [8]	(2)					
Plate:						
Rolled armor	(2)	(2)	[5] 45	[5] 75	90	75
Continuous strip mill production	10	(2)	[5] 45	[5] 75	90	[5] 75
Sheared, universal, or bar mill production	3	(2)	[5] 45	[5] 75	90	[5] 75
Structural shapes, piling	(2)	(2)	45	[9] 75	[9] 150	[illegible]
Pipe, tubing:						
Standard pipe (including couplings furnished by mill)	(10)	(10)	45		120	
Oil-country goods (casing, tubular goods, couplings furnished by mill)	(10)	(10)	45			[illegible]
Line pipe (including couplings furnished by mill)	(10)	(10)	45	75		
Pressure and mechanical tubing (seamless and welded):						
Seamless cold-drawn (pounds):						
Under 20 pounds per foot	5,000	5,000	[9] 60		120	[illegible]
20 pounds per foot and over	5,000	10,000	[9] 60		120	[illegible]
Seamless hot-rolled	(2)	(2)	[9] 60		120	[illegible]
Welded	(2)	(2)	[9] 60		120	[illegible]
Wire, wire products:						
Wire, drawn	(2)	(2)	45	75	90	75
Nails—bright steel wire, steel cut, galvanized, cement-coated and painted	[11] 5		45			
Spikes and brads—steel wire, galvanized, cement-coated	[11] 5		45			
Staples, bright and galvanized (farm and poultry)	[11] 5		45			

Controlled Materials [1]	Minimum quantity* (net tons, except as specified)		Minimum number of days**			
	Carbon [2]	Alloy [2]	Carbon	High-strengin low-alloy	Stainless	Alloy [3]
Wire rope and strand	(2)		45		105	
Welded wire mesh	(2)		45			
Woven wire netting	[11] 5		45			
Barbed and twisted wire	[11] 5		45			
Wire fence, woven and welded (farm and poultry)	[11] 5		45			
Bale ties	[11] 5		45			
Coiled automatic baler wire	[11] 5		45			
Tool steel (all forms including die blocks and tool steel forgings) (pounds)	500	500	[12] 60			[12] 90
Other mill forms and products (excluding castings and forgings):						
Ingots	[13] 25	(14)	45	75	75	75
Billets, projectile and shell stock	(2)	(2)	45	75		75
Blooms, slabs, other billets, tube rounds, sheet bars	[13] 25	(2)	45	75	75	75
Skelp	25		45			
Wire rod	(2)	(2)	45	75	90	75
Rail and track accessories	(2)	(2)	45			90
Wheels, rolled or forged (railroad)	(2)	(2)	45			90
Axles (railroad)	(2)	(2)	45			90

Controlled materials[1]	Minimum quantity* (pounds)	Minimum number of days**
Copper		
Copper and copper-base alloy brass mill products: [15]		
Copper (unalloyed):		
Bar	2,000	45
Shapes, wire (except electrical wire)	500	45
Rod	2,000	45
Sheet, plate (24 inches wide and over)	2,000	45
Rolls and strip (up to 24 inches wide)	2,000	45
Pipe, tube (seamless)	2,000	45
Copper-base alloy:		
Bar	2,000	[16] 45
Wire, shapes	500	[16] 45
Free cutting brass rod	2,000	[16] 45
Other rod	1,000	[16] 45
Sheet, and plate (24 inches wide and over)	2,000	[16] 45
Rolls and strip (up to 24 inches in width)	2,000	[16] 45
Military ammunition cups and discs	2,000	[16] 45
Circles	1,000	[16] 90
Pipe, tube (seamless)	2,000	[16] 45
Copper wire mill products:		
Copper wire and cable:		
Bare and tinned	(17) (18)	35
Weatherproof	(17) (18)	40
Magnet wire	(17) (18)	35
Insulated building wire	(17) (18)	45
Paper and lead power cable	(17) (18)	75
Paper and pulp telephone cable	(17) (18)	45
Plastic insulated telephone cable	(17) (18)	45
Asbestos cable	(17) (18)	60
Portable and flexible cord and cable	(17) (18)	45
Communication wire and cable	(17) (18)	60
Shipboard cable	(17) (18)	75
Automotive and aircraft wire and cable	(17) (18)	45
Insulated power cable	(17) (18)	75
Signal and control cable	(17) (18)	75
Coaxial cable	(17) (18)	75
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	(17) (18)	35

Controlled materials[1]	Minimum quantity* (pounds)	Minimum number of days**
Copper-clad aluminium wire containing over 20 percent copper by weight regardless of end use	(17) (18)	45
Copper and copper-base alloy foundry products and powder:		
Copper, brass, and bronze castings		[19] [20] 14
Copper, brass, and bronze powder (including copper powder, granular and flake, and copper-base alloy powder, granular and flake)		30

Controlled materials[1]	Minimum quantity*	Minimum number of days**
Aluminum		
Ingot, granular or shot, and molten metal:		
Extrusion ingot (billet)	(18)	90
Other ingot and molten metal, primary	(18)	60
Other ingot and molten metal, secondary	(18)	
Sheet and plate:		
Sheet, non-heat treatable	(18)	150
Sheet, heat treatable	(18)	150
Plate, non-heat treatable	(18)	150
Plate, heat treatable	(18)	150
Welded tube	(18)	
Foil	(18)	90
Aluminum conductor:		
ACSR and aluminium cable, bare	(18)	60
Wire and cable, insulated or covered	(18)	60
Rolled bar, rod and wire (continuous cast or rolled):		
Conductor redraw rod	(18)	60
Non-conductor redraw rod	(18)	60
Other rod and bar	(18)	120
Wire, bare, conductor and non-conductor	(18)	120
Extruded bar, rod, shapes and drawn tube:		
Extruded rod and bar—alloys other than 2000 and 7000 series	(18)	60
Extruded rod and bar—alloys in 2000 and 7000 series	(18)	150
Extruded pipe and tube—alloys other than 2000 and 7000 series	(18)	60
Extruded pipe and tube—alloys in 2000 and 7000 series	(18)	150
Extruded shapes—alloys other than 2000 and 7000 series	(18)	60
Extruded shapes—alloys in 2000 and 7000 series	(18)	150
Drawn tube—alloys other than 2000 and 7000 series	(18)	60
Drawn tube—alloys in 2000 and 7000 series	(18)	120
Powder, flake and paste	(18)	60

Controlled materials[1]	Minimum quantity*	Minimum number of days**	
		Solid solution	Precipitation harden
Nickel Alloys			
Rods and bars (except anode bars):			
Hot-rolled, including wire rod	(3)	90	120
Forging quality	(3)	90	120
Cold-finished	(3)	120	165
Sheet and strip:			
Hot-rolled	(3)	90	120
Cold-rolled	(3)	120	165
Foil	(3)	120	165
Plate	(3)	90	120
Pipe, tubing	(3)	90	120
Wire	(3)	120	165

Controlled materials(1)	Minimum quantity*	Minimum number of days**	
		Solid solution	Precipitation hardened
Other mill forms:			
Ingots	(2)	90	120
Blooms, slabs, billets	(2)	90	120
Powder	(2)	90	120
Shapes and forms not listed above (including anode bars)	(2)	(2)	(2)
Castings (less gates and risers, rough as cast)	(2)	90	120

(1) See technical definitions in Schedule III.

(2) All stainless steel products, certain other steel products and all nickel alloy products. By negotiation between the mill and s customer. If no acceptable arrangements are worked out, the Office of Industrial Resource Administration should be otified.

(3) For clad products, add 45 days to lead time indicated.

(4) Includes projectile body stock, sizes under 2⅞ inches.

(5) If annealed or heat-treated, add an additional 15 days.

(6) For welded tubing or high carbon spring steel strip, 75 days.

(7) 60 days for high grade (AISI M15 and oriented).

(8) Steel pipe or tubing exceeding 36 inches O.D. is not a controlled material.

(9) Applies to special rolled shapes including angles and channels.

(10) Published carload minimum (mixed sizes and grades).

(11) Quantity refers to any assortment of wire merchant trade products.

(12) If cold-finished, add an addtional 15 days.

(13) For forging quality, product of one heat.

(14) Product of one heat.

(15) Includes anodes—rolled, forged, or sheared from cathodes.

(16) For refractory alloys, 60 days, except for tube over 5 inches in diameter, which should be 120 days.

(17) Standard package quantities as published by each mill.

(18) Standard minimum quantities as established by each mill.

(19) Lead time applies to unmachined castings after approval of patterns for production.

(20) Small simple castings to fit 12 x 16 inch flask, 7 days.

*Minimum quantity for each size and grade of any items for mill shipment at any one time to any one destination.

**Minimum number of days in advance of first day of month in which shipment is required.

NOTE: Leaders in figure columns indicate not applicable.

9 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 989]

CHEDULE III TO PART 700—TECHNICAL DEFINITIONS OF CONTROLLED MATERIALS PRODUCTS

Steel

"Alloy steel"—Steel containing 50 percent more of iron or steel and any one or more the following elements in the following nounts: manganese, maximum of range in cess of 1.65 percent; silicon, maximum of nge in excess of 0.60 percent (excepting ectrical sheet and strip); copper, maxium of range in excess of 0.60 percent; aluinum, boron, chromium (less than 10 pernt), cobalt, columbium, molybdenum, ckel, tantalum, titanium, tungsten, vanaum, zirconium, or any other alloying elents in any amount specified or known to ve been added to obtain a desired alloying fect. Clad steels which have an alloy steel se or carbon steel base for which nickel d/or chromium is contained in the coat- or cladding material (*e.g.*, nickel-copper oy, nickel-chrome-iron alloy or stainless) e alloy steels.

'Alloy steel plate" includes the following ecifications:

.180 inch or thicker, over 48 inches wide
.230 inch or thicker, over 8 inches wide
—7.53 pounds per square foot or heavier, over 8 inches wide

"Carbon steel"—Any steel (including wrought iron) customarily so classified and also includes: (a) ingot iron; (b) all grades of electrical sheet and strip; (c) high-strength low-alloy steels; (d) clad and coated carbon steels not included with alloy steels: *e.g.*, galvanized, tin, terne, copper (excluding copper wire mill products) or aluminum clad and/or coated carbon steels; and (e) leaded carbon steels.

"Carbon steel plate" includes the following specifications, plus floor plates of any thickness:

—0.180 inch or thicker, over 48 inches wide
—0.230 inch or thicker, over 8 inches wide
—7.53 pounds per square foot or heavier, over 48 inches wide
—9.62 pounds per square foot or heavier, over 8 inches wide

"High-strength low-alloy steels"—Only the proprietary grade promoted and sold for this purpose, and Navy high-tensile steel grade HT Specification Mil-S-16113 (Ships).

"Stainless steel"—Heat and corrosion resisting steel containing 50 percent or more of iron or steel and 10 percent or more of chromium whether with or without nickel, molybdenum, or other elements.

"Stainless steel plate" includes the following size specifications: $\frac{3}{16}$ inch (0.1875) or thicker, over 10 inches wide.

"Standard steel pipe" includes the following:

Ammonia pipe
Bedstead tubing
Driven well pipe
Drive pipe
Dry kiln pipe
Dry pipe for locomotives
English gas and steam pipe
Fence pipe
Furniture pipe
Ice machine pipe
Mechanical service pipe
Nipple pipe
Pipe for piling
Pipe for plating and enameling
Pump pipe
Signal pipe
Standard pipe coupling
Structural pipe
Turbine pump pipe
Water main pipe
Water well casing
Water well reamed and drifted pipe

"Structural steel shapes"—Rolled flanged sections having at least one dimension of their cross section 3 inches or greater, commonly referred to as angles, channels, beams, and wide flange sections.

Copper

"Brass-mill products"—Copper and copper-base alloys in the following forms: sheet, plate, and strip in flat lengths or coils; rod, bar, shapes, and wire (except copper wire mill products); anodes, rolled, forged, or sheared from cathodes; and seamless tube and pipe. Straightening, threading, chamfering, cutting to width or length, or reduction in gauge, do not constitute changes in form of brass mill products. The following related products which have been produced by a change in form of brass mill products are not included in the definition of brass mill products:

Circles, discs (except brass military ammunition discs)
Cups (except brass military ammunition cups)
Blanks and segments
Forgings (except anodes)
Welding rod, 3 feet or less in length
Rotating bands
Tube and nipple—welded, brazed, or mechanically seamed
Formed flashings
Engravers' copper

"Copper-base alloy"—Any alloy of which the percentage of copper metal equals or exceeds 40 percent by weight of the metallic content of the alloy. It does not include alloyed gold produced in accordance with U.S. Commercial Standard CS 67-38.

"Copper foundry products"—Cast copper and copper-based alloy shapes or forms suitable for ultimate use without remelting, rolling, drawing, extruding, or forging. The process of casting includes the removal of gates, risers, and sprues, and sandblasting, tumbling, and dipping, but does not include any machining or further processing. For centrifugal casting, the process includes the removal of the rough cut in the inner or outer diameter, or both, before delivery to a customer. Castings include anodes and shot cast in a foundry or by an ingot maker.

"Copper powder mill products"—Copper or copper-base alloy in the form of granular or flake powder.

"Copper raw materials" includes:

(a) "Refined copper"—Copper metal which has been refined by any process of electrolysis or fire-refined to a grade and in a form suitable for fabrication;

(b) "Blister copper"—High-grade crude copper in any form produced from converter operations and from which nearly all the oxidizable impuritics have been removed by slagging and volatilization;

(c) "Copper and copper-base alloy scrap"—Including fired and demilitarized cartridge and artillery cases;

(d) "Brass mill casting"—From which brass mill or intermediate shapes may be rolled, drawn, or extruded, without remelting;

(e) "Copper-base alloy ingot"—To be used in remelting, alloying, or deoxidizing operations;

(f) "Copper or copper-base alloy shot and waffle"—To be used in remelting, alloying, deoxidizing, or chemical operations; and

(g) "Copper precipitates (or cement copper)"—Precipitated from mine water by contact with iron scrap, tin cans, or iron in other forms.

"Copper wire mill products"—Uninsulated or insulated wire and cable made from copper or copper-base alloy, used for transmission of electrical energy, whatever the outer protective coverings may be, and also copper-clad steel or aluminum wire containing over 20 percent copper by weight regardless of end use. Copper wire mill products shall be measured in terms of pounds of copper content.

Aluminum

"Foil"—A flat rolled product, rectangular in cross section, of thickness less than 0.006 inch.

"Ingot" includes:

(a) "Extrusion ingot (billet)"—A solid or hollow cast form, usually cylindrical, suitable for extruding;

(b) "Other ingot and molten metal, primary"—A cast form other than extrusion ingot (or molten metal), shipped by an integrated producer or nonintegrated fabricator from a company-owned facility not exclusively devoted to producing secondary ingot; and

(c) "Other ingot and molten metal, secondary"—A cast form other than extrusion ingot (or molten metal), principally produced from aluminum scrap to specification by secondary smelters (or others at a facility exclusively devoted to producing ingot from scrap for sale); excludes remelt scrap ingot (RSI) which is considered scrap until remelted and cast into specification ingot.

"Pipe and tube" includes:

(a) "Drawn tube"—A hollow wrought product that is long in relation to its cross section, which is round, square, rectangular, hexagonal, octagonal, or elliptical in shape, sharp or rounded corners, with a uniform wall thickness except as affected by corner radii, and brought to final dimensions by cold drawing through a die (includes tube that is sized);

(b) "Extruded pipe and tube"—A hollow wrought product formed by hot extruding with a uniform wall thickness (except as affected by corner radii) that is long in relation to its cross section, round, square, rectangular, hexagonal, octagonal, or elliptical in shape (excludes tube that is sized by cold drawing); and

(c) "Welded tube"—A hollow product that is long in relation to its cross section, which is round, square, rectangular, hexagonal, octagonal, or elliptical in shape, produced by forming and seam-welding sheet longitudinally.

"Plate" includes:

(a) "Plate, nonheat-treatable"—A flat rolled product, rectangular in cross section, 0.250 inch or greater in thickness, which can be strengthened only by cold work; and

(b) "Plate, heat-treatable"—A flat rolled product, in 2000, 6000, or 7000 alloy series (except 7072), rectangular in cross section, 0.250 inch or greater in thickness, which can be strengthened by a suitable thermal treatment.

"Powder"—An aggregate of discrete particles of aluminum, substantially all of which are finer than 1,000 microns (minus 18 mesh); and includes:

(a) "Atomized powder"—Powder produced by blowing or asperating molten metal through an orifice;

(b) "Flaked powder"—Powder consisting of flat or scale-like particles of a thickness small compared with other dimensions, produced by milling in the presence of a lubricant; and

(c) "Paste"—A blend of powder or flake with a thinner or plasticizer.

"Rod and bar" includes:

(a) "Conductor redraw rod (continuous-cast or rolled)"—A solid round product that is long in relation to cross section, 0.375 inch or greater in diameter, produced by continuous casting followed by size-rolling or by rolling from D.C. cast ingot, suitable for drawing into electrical conductor wire;

(b) "Nonconductor redraw rod (continuous-cast or rolled)"—A solid round product that is long in relation to cross section, 0.375 inch or greater in diameter, produced by continuous casting followed by size-rolling, or by rolling from D.C. cast ingot, suitable for drawing into nonconductor wire;

(c) "Other rod and bar (continuous-cast or rolled)"—A solid round, square, rectangular, hexagon, or octagon-shaped product, produced by continuous casting or rolling that is long in relation to cross section, 0.375 inch or greater in diameter or in at least one perpendicular distance between parallel faces, other than the redraw rod and D.C. cast ingot; and

(d) "Extruded rod and bar"—A solid product produced by extruding (sometimes brought to final dimensions by drawing) that is long in relation to cross section, which is round, square, rectangular, hexagonal, or octagonal in shape and 0.375 inch or greater in diameter or in at least one perpendicular distance between parallel faces.

"Shapes" includes:

(a) "Extruded shapes"—A product produced by extruding, that is long in relation to its cross-sectional dimensions and has a cross section other than that of rod and bar and pipe and tube; and

(b) "Rolled structural shapes"—A structural shape produced by hot rolling.

"Sheet" includes:

(a) "Sheet, nonheat-treatable"—A rolled product, flat or coiled, rectangular in cross section, of 0.006 inch thickness but under 0.250 inch thickness, which can be strengthened only by cold work; and

(b) "Sheet, heat-treatable"—A rolled product, in 2000, 6000, 7000 alloy series (except 7072), flat or coiled, rectangular in cross section, of 0.006 inch thickness but under 0.250 inch thickness, which can be strengthened by a suitable thermal treatment.

"Wire and cable" includes:

(a) "Wire, bare, conductor and nonconductor"—A solid wrought product that is long in relation to its cross section, which is square, round, rectangular, hexagonal, or octagonal in shape, whose diameter or greatest perpendicular distance between parallel faces (except for flattened wire) is less than 0.375 inch;

(b) "ACSR and aluminum cable, bare"—Aluminum stranded conductor reinforced by a core of steel (ACSR), or aluminum (ACAR), or any other bare stranded aluminum conductor; and

(c) "Wire and cable, insulated or covered"—Aluminum electrical conductor wire or stranded conductors that are insulated or covered.

Nickel Alloys

"Nickel alloys"—Those alloys for which the specified nickel content is 10 percent or more up to and including pure nickel, and which the iron content is nominally less than 50 percent of iron, and which does not contain as much as 40 percent of copper, nor as much as 50 percent of aluminum, in the shapes and forms shown in Schedule II. It also includes cast iron for which the specified nickel content is 5 percent or more. It does not include primary nickel in the forms of electrolytic cathodes, pigs, rondelles, cubes, pellets, shot, briquettes, oxide (including sintered oxide), salts, or chemicals; nor does it include primary nickel in the forms of ingots or powder for remelting.

SCHEDULE IV TO PART 700—COPPER CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments for a producer's own account during the previous calendar year.

Product	Set-aside percentages[1]
Brass mill products:	
Unalloyed:	
Plate, sheet, strip, and rolls	3
Rod, bar, shapes, and wire	3
Seamless tube and pipe	2
Alloyed:	
Plate, sheet, strip, and rolls	2
Rod, bar, shapes, and wire	2
Seamless tube and pipe	7
Military ammunition cups and discs	10
Copper wire mill products:	
Bare and tinned	2
Weatherproof	2
Magnet wire	2
Paper and lead power cable	2
Paper and lead telephone cable	2
Asbestos cable	2
Portable and flexible cord	2
Communications wire and cable	2
Shipboard cable	2
Automotive and aircraft wire and cable	2
Insulated power cable	2
Signal and control cable	2
Coaxial cable	2
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	2
Copper foundry products	2
Copper and copper-base alloy powder mill products	(²)

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[1] Applies to metal weight, except copper wire mill products, which are by copper content.

[2] No reserve space required. Producers of these products are nevertheless required to accept rated orders for such products in accordance with the provisions of this regulation.

SCHEDULE V TO PART 700—NICKEL ALLOYS CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments, by each producer, during the previous calendar year.

Product	Set-aside percentages
Rod and bars (except anode bars):	
Hot-rolled, including wire rod	10
Forging quality	10
Cold-finished	10
Sheet and strip:	
Hot-rolled	10
Cold-rolled	10
Foil	10
Plate	10
Pipe, tubing	10
Wire	10
Other mill forms:	
Ingots	10
Blooms, slabs, billets	10
Powder	10
Shapes and forms not listed above (including anode bars)	10
Castings (less gates and risers, rough as cast)	10

APPENDIX I TO PART 700—DELEGATIONS OF AUTHORITY

DPAS DEL. 1—Delegation of Authority to the Secretary of Defense; Defense Priorities and Allocations System (15 CFR Part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Secretary of Defense necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

(a) The Secretary of Defense is delegated the authority to place rated contracts and orders in support of Department of Defense (DOD) programs authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Defense is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National Priority as described in the DOD Master Urgency List.

4. *Co-production Programs.*

(a) The Secretary of Defense may request priority rating authority from DOC for specific co-production programs, and if granted, may authorize only those foreign firms which have entered into a formal co-production agreement with a U.S. producer to use priority ratings.

(b) DOC may authorize the use of priority ratings by other foreign firms providing items necessary to the co-production activity on a case-by-case basis.

5. *Production and Construction Equipment.*

(a) The Secretary of Defense may authorize persons to place rated orders for delivery of production equipment required to support authorized programs of DOD, when the equipment is necessary for the timely performance of rated orders and timely delivery of the equipment cannot be obtained otherwise.

(b) The Secretary of Defense may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized construction projects and when timely delivery of the equipment cannot be obtained otherwise.

6. *Delivery Scheduling.*

The Secretary of Defense is delegated the authority to reschedule deliveries of materials which are required in support of DOD programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOD, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

7. *Special Priorities Assistance.*

The Secretary of Defense may sponsor requests by persons for special priorities asistance upon determining the defense urency of the requested assistance. DOD will: 1) serve as the initial point of contact for ersons needing assistance, (2) verify the acuracy of the information provided and make reasonable efforts to resolve the ssues, and, when necessary, (3) expeditiously forward the request through established DOD channels to DOC to facilitate timely esolution. Upon receipt of the request for pecial priorities assistance, DOC will take mmediate action to effect resolution and ill keep DOD advised of progress.

8. *Controlled Materials.*

The Secretary of Defense is delegated the uthority to make allotments of controlled materials to other agencies in support of authorized defense programs.

9. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Defense should ensure that both DOD personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Defense is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOD programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Defense shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Secretary of Defense should conduct a continuing training program to ensure that appropriate DOD and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

10. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) civilian items for resale in Military Exchanges or the packaging for such items; (2) material purchased from exclusively retail establishments; (3) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (4) direct procurement by or for DOD of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

11. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within DOD and to other agencies of the United States administering DOD programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

12. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to DOD relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 2—Delegation of Authority to the Secretary of Energy; Defense Priorities and Allocations System (15 CFR Part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; Executive Order 11912, 41 FR 15825, 3 CFR 1976 Comp., p. 114, as amended; Executive Order 12148, 44 FR 43239, 3 CFR 1979 Comp., p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; and DMO-13, 44 CFR 330.

2. *Purpose.*

(a) This document delegates certain authority to the Secretary of Energy necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

(a) The Secretary of Energy is delegated the authority to place rated contracts and orders in support of Department of Energy (DOE) programs for national defense authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Energy, in accordance with Executive Order 11912, is delegated the authority to make the findings required by section 101(c) of the Defense Production Act of 1950, as amended, that specified material or equipment is critical and essential:

(1) To maintain or further domestic exploration, production, refining, or transportation;

(2) To conserve energy supplies; or

(3) To construct or maintain energy facilities.

(c) The Secretary of Energy is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National Priority as described in the DOD Master Urgency List.

4. *Production and Construction Equipment.*

(a) The Secretary of Energy may authorize persons to place rated orders for delivery of production equipment required to support authorized atomic energy programs, when the equipment is necessary for the timely performance of rated orders and timely delivery of the equipment cannot be obtained otherwise.

(b) The Secretary of Energy may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized atomic energy construction projects and timely delivery of the equipment cannot be obtained otherwise.

5. *Delivery Scheduling.*

The Secretary of Energy is delegated the authority to reschedule deliveries of materials which are required in support of DOE programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOE, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

6. *Special Priorities Assistance.*

The Secretary of Energy may sponsor requests by persons for special priorities assistance upon determining the defense or energy-related urgency of the requested assistance. DOE will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and when necessary, (3) expeditiously forward the request through established DOE channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOE advised of progress.

7. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Energy should ensure that both DOE personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Energy is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOE programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Energy shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or of the DPAS regulation.

(c) The Secretary of Energy should conduct a continuing training program to ensure that appropriate DOE and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

8. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for DOE of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) Priority ratings to support the maximization of domestic energy supplies provided by section 101(c) of the Defense Production Act of 1950, as amended, may only be used after the findings required by section 101(c) have been made:

(1) The Secretary of Energy must determine that the energy program involved maximizes domestic energy supplies; and find that the specific material or equipment is critical and essential.

(2) The Secretary of Commerce must find that the specific material or equipment is scarce; and that there is a reasonable need to use the priorities and allocations authorities.

(c) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

9. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within DOE and to other agencies of the United States administering DOE programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

10. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 3—Delegation of Authority to the Administrator of General Services; Defense Priorities and Allocations System (15 CFR Part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Administrator of General Services necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

The Administrator of General Services is delegated the authority to place DO rated contracts and orders in support of the General Services Administration's (GSA) Supply Distribution Program for items acquired for authorized programs of the Departments of Defense and Energy. In placing rated orders, GSA is to use the program identification symbol K1.

4. *Special Priorities Assistance.*

The Administrator of General Services may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. GSA will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and when necessary, (3) expeditiously forward the request through established GSA channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep GSA advised of progress.

5. *Compliance, Audits, and Training.*

In exercising this delegation, the Administrator of General Services should ensure that both GSA personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Administrator of General Services is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting the GSA Supply Distribution Program. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Administrator of General Services shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Administrator of General Services should conduct a continuing training program to ensure that appropriate GSA and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

6. *Limitations of Authority.*

(a) This delegation is restricted to the GSA Supply Distribution Program and shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

(b) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for GSA of any items specifically set forth in the Statement of Conditions to this delegation (not published).

7. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within GSA. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

8. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to GSA relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 4—Delegation of Authority to the Director of the Federal Emergency Management Agency; Defense Priorities and Allocations System (15 CFR Part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Director, Federal Emergency Management Agency (FEMA), necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

The Director of FEMA is delegated the authority to place, and upon application, to authorize state and local governments to place, DO rated contracts and orders in support of federal, state, and local civil defense programs or projects approved by FEMA as directly related to programs for the national defense. In placing rated orders, FEMA and the state and local governments are to use the program identification symbol N1.

4. *Special Priorities Assistance.*

The Director of FEMA may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. FEMA will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and when necessary, (3) expeditiously forward the request through established FEMA channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep FEMA advised of progress.

5. *Compliance, Audits, and Training.*

In exercising this delegation, the Director of FEMA should ensure that FEMA personnel, federal, state, and local officials, and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Director of FEMA is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of, or authorized to place, rated orders supporting the FEMA approved federal, state and local civil defense programs or projects. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Director of FEMA shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Director of FEMA should conduct a continuing training program to ensure that appropriate FEMA personnel, federal, state, and local officials, and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

6. *Limitations of Authority.*

(a) This delegation is restricted to federal, state, and local civil defense programs and projects approved by FEMA as directly related to programs for the national defense, and shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

(b) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for FEMA of any items specifically set forth in the Statement of Conditions to this delegation (not published).

7. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within FEMA. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

8. *Effective Date of Delegation.*

This delegation of authority shall take
ffect August 29, 1984.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for
Export Administration.

49 FR 30414, July 30, 1984; 49 FR 50171,
ec. 27, 1984]

PPENDIX II TO PART 700—INTERAGENCY MEMORANDUM OF UNDERSTANDING

epartments of Agriculture and Commerce—Memorandum of Understanding Between the Departments of Agriculture and Commerce Concerning Priorities and Allocations Jurisdiction and Responsibilities for Foods Which Have Industrial Uses

A. Purpose

This Understanding sets forth the prior-
es and allocations jurisdiction and respon-
ilities of the Department of Agriculture
griculture) and the Department of Com-
rce (Commerce) for defense mobilization
the event of a national emergency, and
emergency preparedness functions, as
ey relate to foods which have industrial
s.

B. Authority

Section 201(a) of Executive Order
80, as amended (E.O. 10480), and De-
se Mobilization Order 3 (DMO 3) (44
R 322) provide for the delegation of au-
rity for the administration of priorities
allocations functions under the Defense
duction Act of 1950, as amended (50
.C. App. 2061, *et seq.*), to the Secretary
griculture with respect to food; and to
Secretary of Commerce with respect to
other materials and facilities not specifi-
delegated to other agencies.

Section 901 *et seq.* of Executive Order
, as amended (E.O. 11490), delegates to
Secretary of Commerce the authority
preparing national emergency plans and
eloping preparedness programs covering
production and distribution of all mate-
and the use of all production facilities,
pt those that are specifically assigned
r under the jurisdiction of other agen-
Section 801 *et seq.* of E.O. 11490 pro-
for the delegation of authority with
ct to the production, processing, distri-
n, and storage of food resources, and
se of food resource facilities, to the
tary of Agriculture.

3. Section 601(h) of E.O. 10480 defines the term "food" as:

> * * * all commodities and products, simple, mixed, or compound or complements to such commodities or products, that are capable of being eaten or drunk by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption * * *. The term "food" shall also include all starches, sugars, vegetable and animal fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but shall not include any such material after it loses its identity as an agricultural commodity or agricultural product.

Section 802(1) of E.O. 11490 defines the term "food resources" in the same language. Accordingly, these terms are used interchangeably in this Understanding.

4. The functions delegated by these authorities to the Secretaries of Agriculture and Commerce have been redelegated by the Secretary of Agriculture to the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA).

C. General Provisions

1. This Understanding covers only food and agricultural commodities and products which have industrial uses. Jurisdiction over such commodities will normally pass to Commerce at the point where the foods are no longer capable of being eaten or drunk, except as otherwise provided.

2. The provisions of this Understanding covering fibers are limited to those specifically mentioned in E.O. 10480 and 11490 (*i.e.*, cotton, wool, mohair, hemp and flax fiber), and have the purpose of defining the points at which these fibers lose their identity as agricultural commodities or agricultural products.

3. Both Agriculture and Commerce have jurisdiction over the major food commodities listed in section D of this Understanding. For each of these commodities, the point at which the jurisdiction of Agriculture will end is indicated and, except as otherwise provided, the jurisdiction of Commerce will begin at that point.

(a) The points at which the jurisdiction of Agriculture will terminate are expressed in terms of a particular stage of production or processing pursuant to the authority provided in E.O. 10480 and 11490, and at a point considered to be most administratively feasible.

(b) Consideration is given wherever possible to the structure of an industry. The wet-milling industry, for example, is large and integrated and it is desirable that Agriculture have jurisdiction over the raw products while they are a part of this industry and until they enter the processes of other industries which result in their becoming nonfood or nonagricultural products. As an illustration, corn starch for textile sizing would be under the jurisdiction of Agriculture while it is being extracted from the corn and prepared for use by the textile industry. It would still be under the jurisdiction of Agriculture until it enters the textile manufacturing process. At this point, jurisdiction over this commodity shifts to Commerce.

(c) Commodities such as fats and oils, grain products, egg products, starch from all sources, spices, and tartaric acid are used for the manufacture of so many nonfood or nonagricultural products that it is not practical to enumerate all of these products in section D and to identify in each case the exact beginning process. Consequently, the principle for determining the respective jurisdiction of the two Departments in cases of this type is expressed broadly and supplemented by a few examples of nonfood and nonagricultural products so as to clarify the application of the principle. These examples are not intended to be all-inclusive.

4. Imports and exports of food and agricultural commodities and products in any form prior to industrial uses are within the jurisdiction of Agriculture, subject to meeting requirements that may be imposed by any other agency in the exercise of its authority.

5. Agriculture will, with noted exceptions, allocate and exercise priority controls on food and agricultural commodities and products, taking into account claims presented by Commerce. However, the suballocation of food and agricultural commodities or products for conversion into non-food and non-agricultural commodities or products will be made in accordance with the recommendations of Commerce.

6. It is understood that relationships between Agriculture and Commerce involving jurisdiction over particular functions and particular commodities may have to be amplified at a later time. It is also recognized that there will be situations in which operations of the same person, as defined in section 702(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2152(a)), will be affected by the exercise of the respective authorities of the two Departments under this Understanding. To avoid overlapping and duplication of reporting and related operations in such situations, it is agreed that the two Departments will work out specific cooperative arrangements whereby the facilities of one shall be utilized by the other and that efforts will be made to provide the most feasible arrangements for administering necessary program controls.

7. To assure that both Agriculture and Commerce have full authority to implement their respective responsibilities under E.O. 10480 and 11490, and DMO 3, as well as to effectuate the provisions of this Understanding, each Department delegates to the other the requisite authority for the exercise of priorities and allocations functions as set forth in this Understanding.

D. Particular Commodities

The following list identifies some major food and agricultural commodities and commodity groups in which both Agriculture and Commerce have an interest and provides the point at which Agriculture's jurisdiction ends and Commerce's jurisdiction begins. This list is not all-inclusive but it does cover the major items for which jurisdiction might become an issue.

1. Agriculture shall have jurisdiction over the following commodities until they enter any manufacturing process and lose their identity as food or as agricultural commodities or products (examples are set forth in parentheses after the name of the commodity):

(a) Egg products. (Shampoos, products used in printing, pharmaceuticals)

(b) Fats and oils. (Paints, soap, varnishes, lacquers, printer's ink, cosmetics, pharmaceuticals)

(c) Fatty acids. (Paints, soap, cosmetics, chemicals, pharmaceuticals)

(d) Grain and grain products, including dextrin, corn syrups, grain sugars, lactic acid, gluten, and low-grade wheat flour. (Textiles, adhesives, leather, core binders, pharmaceuticals, nonbeverage alcohol)

(e) Molasses, including blackstrap and high-test, and potatoes. (Nonbeverage alcohol)

(f) Spices, essential oils. (Cosmetics)

(g) Starches. (Adhesives, asbestos, textiles, explosives)

(h) Sugars. (Insecticides, plasticizing agents, adhesives)

(i) Tartaric acid. (Products used in photography, dyeing, textile printing)

2. Agriculture shall have jurisdiction over the following commodities until the specifically designated point in their processing, except as otherwise provided:

(a) Cotton lint and linters, hemp and flax fiber—When the bale is opened for the purpose of processing in the mill in which it is opened. This authority shall extend to the delivery and distribution of soft types of cotton waste but shall not include control over the use of such waste in the mill producing it.

(b) Milk and milk products—When the milk and milk products enter a plant where they are to be used or processed for industrial purposes as distinct from use as human food or animal feed. Agriculture shall have jurisdiction over imports of milk and milk products intended for use as human food or animal feed, while Commerce shall have jurisdiction over imports intended for industrial purposes only.

(c) Wool and mohair—When the wool and mohair (grease and scoured, shorn and pulled) enter a plant where they are to be used, or manufactured into a final product. Inventories of scoured wool or scoured mohair held by manufacturers for their use in producing other products, whether by incorporation into such products or otherwise, shall be controlled by Commerce. The jurisdiction of Agriculture shall extend to the delivery and distribution of noils but shall not include control over the use of noils by the mill producing them.

(d) Naval stores:

(1) Tall oil (sulfate naval stores). Commerce shall have jurisdiction over the production, distribution, processing, and allocation. The distribution of tall oil fatty acids shall be under the jurisdiction of Agriculture.

(2) Wood. Commerce shall have jurisdic- ion over production, distribution, process- ng, and allocation.

(3) Gum. Agriculture shall have jurisdic- ion over production through the first proc- ssing of the gum. Commerce shall have ju- isdiction over allocation.

(4) Commerce will consult with Agricul- ure before allocating naval stores in order o avoid conflict with programs adminis- ered by Agriculture.

3. The following commodities are under e jurisdiction of the designated Depart- ent:

(a) Ice—Agriculture.

(b) Tobacco and tobacco products—Agri- lture.

(c) Hides and leather, hair and bristles, athers, soap, detergents, beeswax, phar- aceuticals (including medicines and vita- ns), acetic acid, chemical leavening com- unds and salt—Commerce.

. In order to further clarify the division authority for fats and oils, Schedule A to s Understanding lists major fats and oils, d fat and oil products, over which Agri- ture has jurisdiction and the major prod- s of fats and oils, and products produced ng fats and oils, over which Commerce s jurisdiction.

. It is recognized that quantities of cer- commodities may be needed for food which are under the jurisdiction of mmerce. Conversely, raw materials for ufacturing may be needed which are er the jurisdiction of Agriculture. In sit- ons of this kind and for other similar modities not listed in this section, work- arrangements will be developed between S and OIRA as the need arises pursu- to the principles set forth in this Under- ding.

E. Effective Date

This Memorandum of Understanding supersedes the Memorandum of Agreement between the Administrators of the Agricultural Marketing Service and the ASCS of the Department of Agriculture, and the Acting Deputy Assistant Secretary for Competitive Assessment and Business Policy of the Department of Commerce, concerning foods which have industrial uses, and signed by them on November 2, 7, and 10, 1973, respectively (38 FR 33504, December 5, 1973); and shall take effect August 29, 1984.

Department of Agriculture
Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service

Date: June 15, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration

Date: June 14, 1984.

SCHEDULE A—JURISDICTION OVER FATS AND OILS

I. Fats and oils and fats and oils products under the jurisdiction of Agriculture:

A. Animal and marine.

1. ANIMAL FATS

Lard
Marrow
Tallows and greases
Wool grease and lanoline
Neats foot oil

2. MARINE OILS

Cod
Dogfish
Fulachon
Herring
Menhaden
Pilchard
Salmon
Sardine
Seal
Shark
Whale

3. MARINE LIVER OILS

Cod
Dogfish
Shark
Swordfish
Tuna fish

4. OTHER ANIMAL AND MARINE FATS AND OILS

Fatty acids
Foots
Oleo oil and oleo searin
Soap stocks

B. Vegetable.

1. VEGETABLE FATS AND OILS

Cocoa butter
Fatty acids
Lecithin
Oiticic
Olive residue
Soap stocks
Tallows and greases

2. MAJOR VEGETABLE OILS

Babassu nut
Castor
Corn
Coconut
Cottonseed
Linseed
Olive
Palm
Palm kernel
Peanut
Rapeseed
Safflower seed
Sesame
Soybean
Sunflower seed
Tung

3. OTHER VEGETABLE OILS

Cashew nut
Cohune
Colza
Hemp seed
Kapok seed
Murumuru
Mustard
Ouricury
Perilla
Poppy seed
Rubber seed
Tea seed
Tucum

C. Edible fats and oils products, including:

Butter
Cooking oil and compounds
Lard compounds
Margarine
Salad oils
Shortenings

D. Combinations and mixtures of animal, marine, vegetable, nut and seed fats and oils, or any of them.

II. Products of fats and oils and products produced using fats and oils under the jurisdiction of Commerce:

Coated fabrics and floor coverings
Glycerine
Inedible products of fats and oils
Paints, varnishes, lacquers
Printer's ink
Soap

DEPARTMENTS OF AGRICULTURE AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF AGRICULTURE AND COMMERCE CONCERNING PRIORITIES AND ALLOCATIONS JURISDICTION AND RESPONSIBILITIES FOR FARM EQUIPMENT

A. Purpose

This Understanding sets forth the priorities and allocations jurisdiction and responsibilities of the Department of Agriculture and the Department of Commerce for defense mobilization in the event of a national emergency, and for emergency preparedness functions, as they relate to the domestic distribution of farm equipment.

B. Authority

1. Section 201(a) of Executive Order 10480, as amended (E.O. 10480), and Defense Mobilization Order 3 (DMO 3) (44 CFR 322) provide for the delegation of authority for the administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), to the Secretary of Agriculture with respect to the domestic distribution of farm equipment; and to the Secretary of Commerce with respect to all other materials and facilities not specifically delegated to other agencies.

2. Section 601(i) of E.O. 10480 defines the term "farm equipment" to mean equipment manufactured for use on farms in connection with the production or processing of food.

3. Section 901 *et seq.* of Executive Order 11490, as amended (E.O. 11490), delegates to the Secretary of Commerce the authority for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials and the use of all production facilities, except those that are specifically assigned to, or under the jurisdiction of other agencies. Section 801 *et seq.* of E.O. 11490 provides for the delegation of this authority with respect to the domestic distribution of farm equipment to the Secretary of Agriculture.

4. The functions delegated by these authorities to the Secretaries of Agriculture and Commerce have been redelegated by the Secretary of Agriculture to the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA).

C. General Provisions

1. The term "farm equipment" as used in E.O. 10480 and 11490, for the purposes of this Understanding, includes only those items of machinery, equipment, attachments, and repair or replacement parts identified in Schedule A to this Understanding.

2. In a national emergency or mobilization situation, OIRA may request ASCS to make special distribution of the farm equipment items listed in Schedule A that can be used off the farm for civil defense and life saving purposes. ASCS will give full consideration to these requests in accordance with the priorities and allocations policies of the Federal Government in effect at that time.

D. Effective Date

This Memorandum of Understanding supersedes the Memorandum of Understanding and Agreement between the Administrator of the ASCS of the Department of Agriculture, and the Acting Deputy Assistant Secretary for Competitive Assessment and Business Policy of the Department of Commerce, concerning the scope of the term "Farm Equipment", and signed by them on November 7 and 10, 1973, respectively (38 FR 34749, December 5, 1973); and shall take effect August 29, 1984.

Department of Agriculture
Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service
Date: June 15, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration
Date: June 14, 1984.

SCHEDULE A—FARM EQUIPMENT

Tractors, Wheel, Manufactured Specifically for Farm Use

Farm Tractors, 2-Wheel Drive, 20 to 39 PTO HP
Farm Tractors, 2-Wheel Drive, 40 to 99 PTO HP
Farm Tractors, 2-Wheel Drive, Over 100 PTO HP
Farm Tractors, 4-Wheel Drive,

Tillage Equipment

Bedders, Bed Levelers, Shapers, and Splitters
Blockers and Thinners, row crop
Cultivators, Field, Row Crop, Tobacco and Vineyard, mounted and pull type
Harrows, including: spike-tooth, spring-tooth, tine-tooth, disk, rotary, offset, knife, oscillating, bush and bog, and tandem disk
Land Levelers
Middlebusters, Ridgebusters, and Clodbusters
Mulch Tillage Implements
Plows, including: moldboard, chisel, ditching, terracing, and one-way disk
Pulverizers, stalk
Ridgelevelers
Rod Weeders
Rotary Hoes and Tillers, field type
Rollers and Cultipackers, including combination harrow-packers
Shredders, brush and stalk, bush hog
Stubble Shavers, cane
Subsoilers, Tractor mounted and pull-type
Tillers, basin and disk
Tool bars and carriers
Transport carriers, farm implement

Fertilizing and Liming Equipment

Anhydrous Ammonia Applicators, Pumps, Tanks and Tank Wagons
Dry and Liquid Fertilizer Attachments for Drills and Planters
Fertilizer Distributors and Applicators
Fertilizer storage bins and tanks
Pumps, Liquid Fertilizer
Side-Dressing attachments
Spreaders, Lime and Fertilizer, Tractor or Truck mounted and pull type
prayers, Liquid fertilizer, Truck mounted and pull type

Planting Equipment

Drills and Planters, including fertilizer attachments
Grass Seeder, Broadcast-type, Tractor mounted or pull type
Grass Seeder attachments, Drill and Tillage equipment
Listers
Planters, Minimum or no Tillage, Tractor mounted or pull type
Potato Planters, Brushers, Cutters, and Desprouters
Seeders
Transplanters

Agricultural Dusters and Sprayers

Dusters, Crop, Field, Livestock, Poultry, Orchard, and Vineyard
Foggers and Mist Blowers
Granular Chemical Applicators, Broadcast and Band-type
Herbicide Applicators, Low Volume
Sprayers, Field, Livestock, Poultry, Orchard, and Vineyard, Air Mist, Boomtype and Boomless, Trailer or Tractor mounted and self-propelled

Harvesting Equipment

Augers, Conveyors and Elevators, farm type, portable and stationary, with or without wheels
Bunchers and Tiers, Vegetable, farm type
Combines, Harvester-thresher, self-propelled and pull type, including corn head and windrow attachments
Corn Cribs
Corn Pickers and Picker-shellers, self-propelled, pull type, and semi-mounted
Cotton Pickers and Strippers, self-propelled, Tractor mounted and pull type
Crop and Grain Dryers and Fans, batch, bin, and continuous operation types
Curers, Tobacco
Grain Bins, including: perforated floors, ladders, spreaders, stirring devices, unloaders, and ventilation equipment
Grain Blowers
Harvesters, Harvesting and Handling Equipment for Corn, Grain, Vegetables, Peanuts, Tobacco, Onions and Nuts
Hullers, Graders, Sorters, Sackers, Conveyors, farm type for Potatoes, Fruit, Vegetables, Grain, Seed and Nuts
Orchard and Vineyard Pruning Equipment, power
Peanut Drying Equipment
Potato Diggers, Pickers and Baggers
Power Units for Harvesting Equipment, self-propelled
Sugar Beet Harvesters, Toppers, Lifters, and Loaders
Sugar Cane Harvesting Equipment
Toppers, Crop and Vegetable
Windrowers and Swathers, Dry Edible Beans and Pea Vine

Hay and Forage Harvesting Equipment

Balers, Twine, and Wire, self-propelled and pull type, including round bale type
Forage Blowers and Cutter Blowers, Pipe, and Spouts
Forage Harvesters, self-propelled, Tractor mounted and pull type
Forage Wagons and Boxes, running gear and truck mounted
Giant Hay Balers, Stackers and Transportation Equipment
Hay Tedders
Hay Wafering and Cubing Machines
Mowers, Choppers, conditioners, Mower-conditioners, and Windrowers, field, flail, rotary, or sickle bar, mounted or pull type
Rakes, side delivery
Loaders, loose hay
Loaders, Stackers and Bale Throwers

Dairy, Poultry and Livestock Equipment

Barn Manure Cleaners, dairy, livestock and poultry types
Bale Feeders, giant-size Bale and Stack types
Brooders, poultry and hog
Bunk Feeder Systems, including: Wagon or truck-mounted feeder boxes
Carriers, Hay, Litter and Feed, overhead and track type
Dairy Barn Equipment, including: pens, stanchions and stalls
Egg Gathers and Collecting Systems, automatic
Egg Room Coolers and Humidifiers
Egg Graders, Candlers and Washers
Feed Mills, Grinder-mixers, Roller Mills, and Mixers, stationary and portable
Feed Storage Bins and Tanks, elevated, bulk
Feed and Grain Metering Devices
Feeders and Waterers, cattle, sheep, hog and poultry, automatic and manual
Hog Confinement Systems, Farrowing Stalls and Feeding Systems
Incubators, poultry
Livestock Confinement Buildings, including: feeding, watering, ventilation and cleaning systems
Livestock Handling Gates, Pens and Chutes
Liquid Manure Pumps and Tanks
Manure Loaders, Tractor mounted
Milk Cooling Tanks, bulk and can type
Milking Machines, Pipelines and Transfer Stations
Milk Room Equipment, including: water heaters, sterilizing and washing tanks
Milking Parlor Stalls, including: feeding systems
Poultry Cages, Feed and Water Systems
Silo, upright and concrete trench-type
Silo Unloaders, upright and trench-type, top or bottom
Silo-filling Equipment, including: pipe and distribution equipment
Spreaders, Barn and Liquid Manure
Tanks, Livestock, Dipping and Stock Water
Ventilation Systems, automatic, electric

Water Supply Equipment

Jacks, Pump
Pumps, Hand, Windmill, electric, PTO and motor-powered
Water Systems including: storage and/or pressure tanks, domestic and farmstead, deep and shallow well, jet and non-jet

Irrigation Equipment

Ditch Gates, Furrow Openers, Levee Plows
Pipe, Couplers, Valves and Sprinkler Heads
Systems Controls, automatic and center pivot
Systems Pumps, deep well, shallow well and surface water supply type

Other Farm Equipment, N.E.C.

Alcohol Distilling Plants, farm type
Chain Saws
Cleaners and Graders, farm type, grain and seed
Diggers, post-hole, Tractor mounted, farm type
Electric Generating Plants, farm type, continuous duty and standby, Tractor or motor powered
Fencing Materials
Log Skidders and Splitters
Post Drivers and Pullers, power, farm type
Tracks, Crawler, combine and wheel Tractor
Wagon Running Gears, farm type
Wagon Boxes, including: Auger unloading, barge and flare, bunk feeding, forage, feed-mixing, gravity and hydraulic dump
Windmill Towers and Heads

Repair and Replacement Parts

Parts manufactured specifically for use in the maintenance and repair of the farm equipment (including plowshares and disc blades) listed in this Schedule.

Departments of Energy and Commerce—Memorandum of Understanding Between the Departments of Energy and Commerce Concerning the Jurisdiction and Responsibilities for Products and Equipment Associated with the Production of Petroleum and Gas for Emergency Preparedness and Mobilization

A. Purpose

This Understanding sets forth the jurisdiction and responsibilities of the Department of Energy (DOE) and the Department of Commerce (DOC) for defense mobilization, emergency preparedness, and resource management programs under the authorities listed in section B, in the event of a national emergency, as such programs relate to the production and distribution of: (1) chemicals and fluids made especially for use in the petroleum and gas industry; (2)

and gas field machinery and equipment; and (3) petrochemicals derived from oil, gas, and natural gas liquids.

B. Authority

1. Pursuant to section 201(a) of Executive Order 10480, as amended (E.O. 10480), Defense Mobilization Order 3 (DMO 3) (44 CFR 322) delegates authority for the administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), to the Secretary of Energy with respect to petroleum, gas, solid fuels, and electric power; and to the Secretary of Commerce with respect to all other materials and facilities not specifically delegated to other agencies.

2. Executive Order 11490, as amended (E.O. 11490), delegates to the Secretary of Commerce the authority for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials, and the use of all production facilities except those hat are specifically assigned to, or under he jurisdiction of, other agencies. Such an exception is provided for the production nd distribution of, and the use of facilities or, petroleum and gas. E.O. 11490 provides or the delegation of this authority to the ecretary of Energy.

3. The functions delegated by these au-horities to the Secretaries of Energy and ommerce have been redelegated by the ecretary of Energy to the Assistant Secre-ary for Environmental Protection, Safety, nd Emergency Prepareness, and by the ecretary of Commerce to the Director, ffice of Industrial Resource Administra-on (OIRA).

C. Departmental Jurisdiction

The primary use of a product or material the basis for the division of Departmental risdiction set forth below. Any product or aterial not specifically identified in this nderstanding which is used primarily as a el or in a primary manufacturing process produce fuel, is under the jurisdiction of OE. Generally, any non-fuel product or terial, or any product or material which used primarily as an industrial raw mate-l, is under the jurisdiction of DOC. In the nt that questions arise with respect to isdiction over particular products, mate-ls, or production facilities, it is agreed t the two Departments will resolve these stions in such a manner as to provide most feasible arrangements for program ninistration.

Production.

epartment of Energy: DOE has jurisdic- over the production of: (a) petroleum gaseous fuels, natural gas liquids, and oleum lubricants, including "refinery finished products," "unfinished oils," and "petrochemical feedstocks"; (b) "petrochemicals" from processing units located within a petroleum refinery where the weight of "petrochemicals" in the output of the processing unit constitutes less than 30 percent by weight of the net input to the unit; (c) n-paraffin "petrochemical intermediates"; (d) "special petroleum chemical supplies"; and (e) any fossil fuel or synthetic product not specifically indentified which is or can be used as a fuel or lubricant.

Department of Commerce: DOC has jurisdiction over the production of: (a) all "chemicals" including "petroleum processing catalysts" and "fuel combustion improvers"; and (b) "petrochemicals" including those from processing units located within a petroleum refinery where the weight of "petrochemcials" in the output of the processing unit constitutes 30 percent or more by weight of the net input to the unit; and (c) oil and gas field machinery and equipment as identified in Schedule A to this Understanding, as well as any machinery, equipment, and technologies not yet developed for obtaining petroleum and natural gas.

2. Facilities.

Department of Energy: DOE has jurisdiction over all facilities for which production jurisdiction has been assigned to it by this Understanding.

Department of Commerce: DOC has jurisdiction over all facilities for which production jurisdiction has been assigned to it by this Understanding.

3. Distribution.

Department of Energy: DOE has jurisdiction over the distribution of: (a) all petroleum, gaseous fuels (when such jurisdiction as authorized by E.O. 11490 is not exercised by the Federal Energy Regulatory Commission), natural gas liquids, and petroleum lubricants; (b) all "special petroleum chemical supplies," "petroleum processing catalysts," and "fuel combustion improvers"; (c) "petrochemical feedstocks" except those produced or gathered specifically for a chemical operation; (e) any other fossil fuel or synthetic product which is or can be used as a fuel; and (f) oil and gas field machinery and equipment as identified in Schedule A to this Understanding, as well as any machinery, equipment, and technologies not yet developed for obtaining petroleum and natural gas.

Department of Commerce: DOC has jurisdiction over the distribution of: (a) all "chemicals" including "petrochemicals" but excluding those chemical product groups assigned to DOE; (b) "petrochemical feedstocks" specifically produced or gathered for a chemical operation; and (c) "non-fuel or non-lubricant petroleum products."

D. Definitions

Under this Understanding, the term "petroleum" means crude oil, synthetic liquid fuel, their products and associated hydrocarbons, including pipelines for their movement and facilities specially designed for their storage; and the term "gas" means natural gas (excluding helium) and manufactured gas (but not industrial gases), including pipelines for their movement and facilities specially designed for their storage, when such juridiction as authorized by E.O. 11490 is not exercised by the Federal Energy Regulatory Commission. For the purpose of assigning jurisdiction under this Understanding, the following additional definitions shall apply:

1. "Petrochemical Feedstocks"

Includes hydrocarbon materials obtained from petroleum and natural gas when used as "feedstock" or raw material for the production of "primary petrochemicals" or "petrochemical intermediates." These materials also include:

Natural gas (methane) processed to a quality suitable for pipeline transmission;

Natural gas liquids which are the several low boiling point, lower molecular weight hydrocarbons that include ethane, propane, butanes, pentanes, and liquified petroleum gases obtained from the processing of natural gas;

Naphtha (light petroleum liquids) which is a medium boiling point range mixture of hydrocarbons obtained from the processing of natural gas, crude oil, or petroleum refining. Naphtha is the major component of gasoline. The usual distillation range of naphtha feedstock is 100-400°F; and

Gas oil (heavy petroleum liquids) which is a high boiling point mixture of hydrocarbons obtained from the processing of crude oil or petroleum refining. Gas oil is the major component of distillate grades of fuel oil. Atmospheric gas oil may comprise hydrocarbons in the distillation range 400-650°F; vacuum gas oil may comprise higher boiling materials in the distillation range 650-1000°F.

2. "Chemicals"

For the purpose of this Understanding, "chemicals" shall comprise those products listed under Major Group 28, Chemical and Allied Products, Standard Industrial Classification Manual, 1977 Edition; and shall specifically include "petrochemicals," "petroleum processing catalysts," "fuel combustion improvers"; but shall exclude "special petroleum chemical supplies."

3. "Petrochemicals"

Chemical materials which, directly or indirectly, are manufactured from petrochemical feedstock hydrocarbons. These materials include:

Primary petrochemicals produced directly from feedstocks by chemical conversion or breakdown and mainly used for the production of "intermediates" or petrochemical "products";

Petrochemical intermediates generally produced by chemical converson of primary petrochemicals to form more complicated derived compounds. Such compounds serve as the raw material for synthesis of petrochemical "products," and for numerous other materials; and

Petrochemical products which are end products of the chemical industry produced by chemical conversion of "primary" petrochemicals or petrochemical "intermediates"

4. "Refinery Finished Products"

Any one of the petroleum oils or mixtures of oils which can be used without further processing, including:

Liquified petroleum gases (LPG);
Gasoline;
Jet fuel;
Naphtha;
Distillate fuel oils;
Lubricating oils and greases;
Residual fuel oils;
Asphalt; and
Natural gas products—natural gasoline.

5. "Unfinished Oils"

Semi-finished refinery products, or unseparated mixtures of refinery products which are further processed for production of "refinery finished products."

6. "Special Petroleum Chemical Supplies"

Products made especially for use in the production, refining and compounding of petroleum fuels and lubricants, including:

Hydrogen produced in a refinery for use in petroleum processing; and

Special additives:

for fuels and lubricants;
to facilitate the drilling of oil and gas wells
to stimulate the production of oil and gas
for enhanced oil recovery; and
to facilitate the pipeline transmission of petroleum.

7. "Non-fuel or Non-lubricant Petroleum Products"

Certain products produced in the course of the refining of petroleum whose primary uses are other than as fuels or lubricants such as:

Asphalts;
Coke, petroleum—green and calcined;
Cresylic acids;
Naphthenic acids;
Oils, rubber extending;
Solvents—aliphatic and aromatic hydrocarbons;
Waxes, refined—paraffin and micro-crystalline; and
White oils, petrolatums, and other oils for medicinal, pharmaceutical and cosmetic purposes.

8. "Petroleum Processing Catalysts"

Solid inorganic compositions used in pe-
oleum refining to facilitate the conversion
hydrocarbons by chemical reaction, in-
ding:
Catalytic cracking;
Hydrocracking;
Reforming;
somerization;
Desulfurization; and
Hydrotreating.
. "Fuel Combustion Improvers"
hemical compostions added to liquid pe-
leum fuels to improve combustion char-
eristics, including:
thanol (ethyl alcohol);
Methanol (methyl alcohol);
Methyl tertiary butyl ether;
ertiary butyl alcohol;
etraethyl lead and tetramethyl lead, and
r blends for use as anti-knock materials;

her products such as amyl nitrate,
yl nitrate, n-methyl aniline, and the
ganese-methyl cyclopentadiene com-
es.

E. Delegation of Authority

ensure that DOE and DOC have the
isite authority to implement their re-
sibilities under E.O. 10480 and 11490,
DMO 3, as well as to effectuate the pro-
ns of this Understanding, each Depart-
delegates to the other its authority for
exercise of priorities and allocations
tions under Section 101(a) of the De-
Production Act of 1950, as amended,
respect to the facilities, materials, and
ucts specified in this Understanding.

F. Effective Date

s Memorandum of Understanding
take effect August 29, 1984, supersed-
he Memorandum of Agreement be-
the Department of the Interior and
Department of Commerce that became
ive on October 30, 1973 (38 FR 30896,
nber 8, 1973). The Department of the
or's authority under this Memoran-
of Agreement was transferred to the
tment of Energy effective October 1,
by Executive Order 12038 (43 FR 4957,
ary 7, 1978).

tment of Energy
Merklein
ant Secretary, International Affairs
d Energy Emergencies

: July 10, 1984.

tment of Commerce
A. Richards,
or, Office of Industrial Resource Ad-
nistration

: June 20, 1984.

SCHEDULE A—MACHINERY AND EQUIPMENT REQUIRED FOR THE DISCOVERY, DEVELOPMENT, OR COMPLETION OF OIL AND GAS WELLS

Exploration and Development Drilling

Transportation (trucks, boats, helicopters)

Drilling (rigs, pipes, pumps, engines, tanks, etc.)

Drilling Fluids (weighting materials, chemicals, clays, etc.)

Well Equipment (casing, carbon and alloy steel wellheads)

Completion

Well Equipment (Christmas trees, tubing, liners, safety valves, etc.)

Completion Equipment (workover or drilling rig, wireline unit)

Well Services (sand control, acidizing, fracturing, cleanout)

Oil Production Facilities

Pipe
Structures
Vessels
Instruments
Hardware and Accessories
Associated Gas Facilities

Gas Production Facilities

Field Gathering System
Compression Facilities
Processing Facilities

Artificial Lift Facilities

Rod Pump
Gas Lift
Submersible Pumps
Maintenance

Well Servicing

Well Equipment
Well Servicing Equipment
Well Services
Materials

Enhanced Recovery

Waterflooding
Gas Injection
Tertiary Processes

DEPARTMENTS OF THE INTERIOR AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF THE INTERIOR AND COMMERCE CONCERNING THE JURISDICTION AND RESPONSIBILITIES FOR CERTAIN MINERALS, FACILITIES AND MATERIALS; AND DELEGATION OF AUTHORITY

A. Purpose

This Understanding sets forth the jurisdiction and responsibilities of the Department of the Interior and the Department of

Commerce for defense mobilization, emergency preparedness programs, and resource management in the event of a national emergency as they relate to stages of processing and types of facilities concerning certain minerals. This Understanding also provides for a delegation of certain authority to the Secretary of the Interior which is presently assigned to the Secretary of Commerce.

B. Authority

1. Section 201(a) of Executive Order 10480, as amended (E.O. 10480), and Defense Mobilization Order 3 (DMO 3) (44 CFR 322), provide for the delegation of authority to the Secretary of Commerce for administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), for materials and facilities not specifically delegated to other agencies. Section 602 of E.O. 10480 provides for redelegation of this authority.

2. Section 901 *et seq.* of E.O. 11490 provides for the delegation of authority to the Secretary of Commerce for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials and the use of all production facilities, except those that are specifically assigned to, or under the jurisdiction of, other agencies. Such an exception is provided for the production and related distribution of minerals. Section 701 *et seq.* of E.O. 11490 provides for the delegation of this authority to the Secretary of the Interior.

3. Section 702(5) of E.O. 11490 defines the term "minerals" to mean:

> * * * all raw materials of mineral origin * * * obtained by mining and like operations and processed through the stages specified and at the facilities designated in an agreement between the Secretary of Commerce as being within the emergency preparedness responsibilities of the Secretary of the Interior.

This Understanding implements this requirement.

4. The functions delegated by these authorities to the Secretaries of Commerce and the Interior have been redelegated by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA), and by the Secretary of the Interior to the Director, Bureau of Mines.

C. Departmental Responsibilities

1. *Department of the Interior.* Schedule A to this Understanding contains a listing of mineral commodities and related facilities and materials. With respect to the mineral commodities listed in Column 1 of Schedule A, the Secretary of the Interior shall have emergency preparedness and mobilization responsibilities for the facilities listed in Column 2 of the Schedule, the production of materials by these facilities, and the distribution of the materials listed in Column 3 of the Schedule.

2. *Department of Commerce.* With respect to the mineral commodities listed in Column 1 of Schedule A, the Secretary of Commerce shall have emergency preparedness and mobilization responsibilities for all facilities other than those listed in Column 2 of the Schedule, for the production of materials by these other facilities, and for distribution of all materials not listed in Column 3 of the Schedule.

D. Delegation of Authority

1. Pursuant to the authority of section 602(b) of E.O. 10480, the Secretary of Commerce hereby delegates to the Secretary of the Interior with respect to the facilities and materials listed in Columns 2 and 3 of Schedule A, all the functions under the Defense Production Act of 1950, as amended (DPA), which are delegated or assigned to the Secretary of Commerce by or pursuant to the following sections of E.O. 10480:

(a) Section 201(a), as implemented by section 3(a) of DMO 3 (relating to exercise of priorities and allocations authority under Title I of the DPA);

(b) Section 301 (relating to development of measures for expansion of production of materials necessary for the national defense);

(c) Section 302 (relating to guarantees of loans or contracts in connection with the expediting of production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, etc.);

(d) Section 312 (relating to recommendations for action under sections 302 and 303 of the DPA);

(e) Section 501 (relating to consultation with industry and making recommendations to the Director of the Federal Emergency Management Agency respecting voluntary agreements under section 708 of the DPA); and

(f) Section 602 (relating to the exercise of various general administrative functions under Title VII of the DPA).

2. This delegation shall be effective only with respect to the facilities and materials listed in Columms 2 and 3 of Schedule A.

E. Effective Date

This Memorandum of Understanding and Delegation of Authority supersedes the Agreement between the Secretary of the Interior and the Secretary of Commerce and signed by them on June 21, 1962, and the Delegation of Authority from the Secretary

Commerce to the Secretary of the Interi- published in 32 FR 2462 on February 4, 67; and shall take effect August 29, 1984.

epartment of the Interior
bert C. Horton,
rector, Bureau of Mines

Date: June 21, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration

Date: June 20, 1984.

SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS

1 Commodity	2 Facilities	3 Materials
ives:		
mina:		
used	Processing plants	Ores.
irconia	Do.	Do.
undum	Mines; crushing, sizing, washing, grading and concentrating plants.	Do.
nond:		
dustrial	Mines; concentrating plants	Do.
nthetic	Processing plants	Carbon.
ry	Mines; beneficiation plants	Ores.
et	Do.	Do.
ding pebbles	Do.	Do.
ding stones	Quarries; cutting plants	Crude stone.
on carbide	Processing plants	Ores.
i and rottenstone	Mines; crushing, grinding, and grading plants	Crude tripoli, amorphous silica, rottenstone.
um	Bauxite mines; drying and calcining plants; alumina plants; reduction plants; secondary smelters; processing plants.	Crude, dried and calcined bauxite, alumina, aluminum-base scrap.
y	Mines; concentrating plants; primary smelters; refineries; leaching plants.	Ores, concentrates, residues, scrap.
	Mines; concentrating plants; smelters; refineries	Do.
s	Mines; separation and classification plants	Ores.
	Mines; beneficiating, grinding and grading plants	Ores, concentrates.
n	Mines; concentrating and grinding plants; refineries	Do.
	Mines; concentrating plants; smelters; refineries	Ores, concentrates, base bullion, residues.
	Mines; wells; refineries	Ores, brines.
	Plants recovering bromine	Bitterns, brines.
	Mines; magnesium compound recovery and burning plants.	Ores.
	Concentrating plants; smelters; refineries	Ores, concentrates, residues.
unds	Brines and synthetic chemical processing plants	Brines.
	Processing plants	Crude materials.
	Blending, sintering, and grinding plants	Limestone, clay, sand, gypsum, iron-containing materials.
	Mines; concentrating plants; extraction plants	Ores, concentrates, residues, solutions.
	Mines; processing plants	Ores, concentrates, additives.
	Mines; drying, grinding, calcining and concentrating plants.	Ores.
y	Mines; drying, calcining, shredding and grinding plants.	Do.
e	Mines; drying, activating, grinding, concentrating and sizing plants.	Do.
earth	Mines; drying, calcining, activating, grinding and screening plants.	Do.
	Mines; drying, calcining, concentrating and grinding plants.	Do.
clay and shales	Mines; beneficiation plants; expanding plants	Crude common clay, shale.
	Mines; concentrating plants; leaching plants; refineries.	Ores, concentrates, matte, slurries, in-process oxides, smelter anodes.
	Mines; dredges; processing plants	Ores, slags, additives.

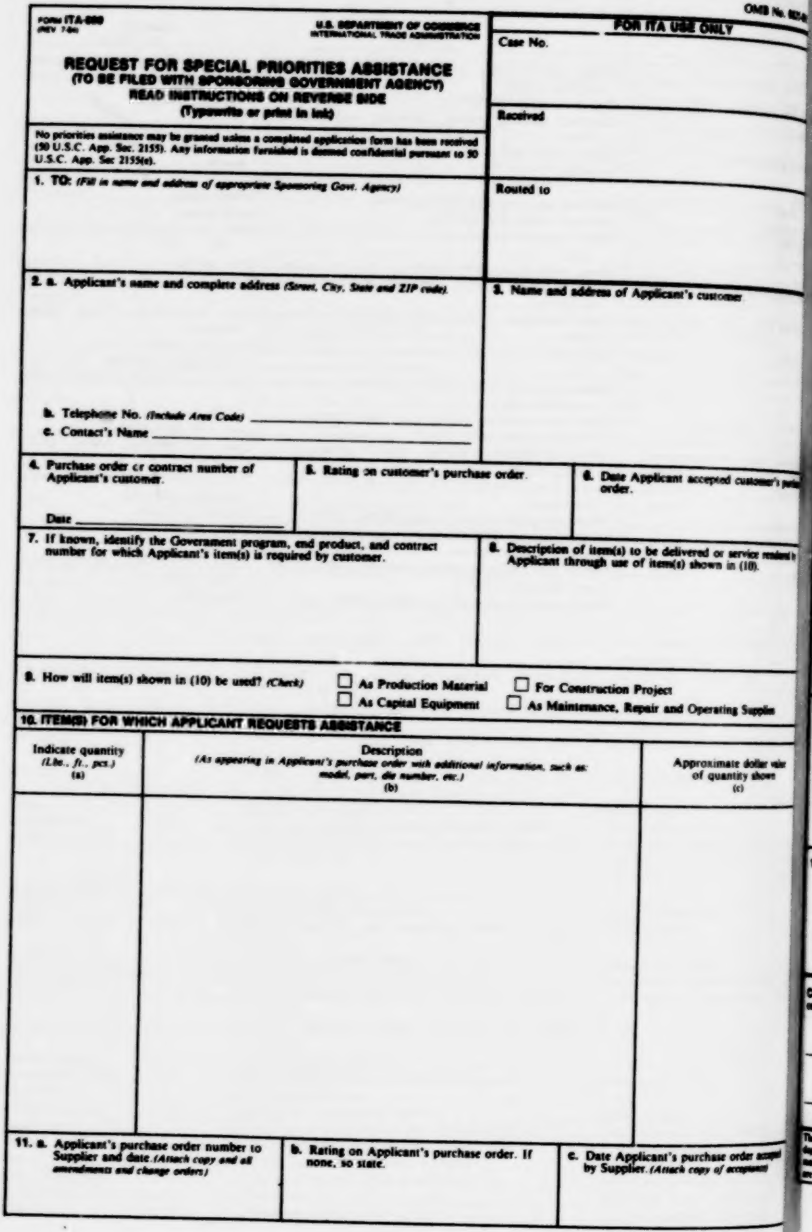
SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS—Continu

1 Commodity	2 Facilities	3 Materials
Copper	Mines; concentrating plants; leaching plants; electrowinning plants; smelters; refineries.	Ores, scrap, concentrates, pre tates, matte, speiss, bl smelter anodes.
Cryolite	Mines; concentrating and grading plants	Ores, concentrates.
Diatomite	Mines; beneficiation plants	Crude materials.
Dolomite	Mines; compounds recovery and burning plants	Ores.
Feldspar	Mines; grinding, concentrating and grading plants	Do.
Ferroalloys	Plants; furnaces	Ores, concentrates, metallic a tives.
Fluorspar, natural and synthetic	Mines; processing plants	Ores, concentrates, hydroflu acid.
Gallium	Refineries; processing plants	Concentrates, residues.
Gem stones	Mines; concentrating plants	Ores.
Germanium	Refineries	Concentrates, residues.
Gold	Mines; concentrating plants; leaching and precipitation plants; smelters; refineries.	Ores, concentrates, interme smelter products, scrap.
Graphite, natural and synthetic	Mines; beneficiating and processing plants	Ores, carbon.
Greensand	Mines; concentrating plants	Ores.
Gypsum	Mines; crushing and calcining plants	Crude gypsum.
Hafnium	Mines; concentrating plants; reduction plants	Ores.
Helium	Processing plants	Helium-rich natural gas.
Ilmenite	Mines; concentrating plants; processing plants; grinding plants.	Ores, concentrates.
Indium	Refineries; leaching plants	Concentrates, fume, dusts, r dues, slags.
Iodine	Mines; concentrating plants; wells	Ores, brines.
Iron	Mines; concentrating plants; agglomerating plants; prereduction plants; blast furnaces; crude steelmaking facilities.	Ores, concentrates, direct-redu materials, scrap, pig iron, a tives.
Iron oxide pigments, natural and synthetic.	Mines; beneficiating and processing plants	Ores, additives.
Kyanite, andalusite, sillimanite, and dumortierite.	Mines; concentrating and calcining plants	Do.
Lead	Mines; concentrating plants; smelters; refineries; leaching plants.	Ores, concentrates, base bu residues, scrap.
Limestone (lime) and marl	Mines: quarries; crushing and grinding plants; kilns and lime plants.	Crushed limestone, marl.
Lithium	Mines; concentrating plants; brine-processing plants	Ores, brines.
Magnesium	Mines; processing plants	Do.
Manganese	Mines; concentrating plants; agglomerating plants; leaching plants.	Ores, concentrates, agglomera
Mercury	Mines; concentrating plants; leaching plants; electrolytic plants; retorts and furnaces.	Ores, concentrates, scrap.
Mica	Mines; beneficiation plants	Crude mica.
Molybdenum	Mines; concentrating plants; processing plants	Ores, concentrates.
Nickel	Mines; concentrating plants; leaching plants; smelters; refineries.	Ores, concentrates, matte, sin in-process oxides, sm anodes.
Nitrogen (fixed)	Processing plants	
Olivine	Mines; concentrating plants	Ores, concentrates.
Perlite	Mines; grinding and screening plants; expanding plants.	Crude perlite.
Phosphate rock	Mines; beneficiation plants	Ores, concentrates.
Platinum-group metals	Mines; concentrating plants; refineries	Ores, concentrates, residues.
Potash	Mines; concentrating plants; processing plants; refineries.	Ores, concentrates, brines.
Pumice	Mines; crushing, drying, screening and grading plants.	Ores.
Quartz crystal	Mines; grading plants	Do.
Rare-earth metals	Mines; beneficiating and processing plants	Ores, concentrates.
Refractories	Processing plants	Ores.
Rhenium	Refineries; processing plants	Ores, concentrates.
Rubidium	Mines; concentrating plants; extraction plants	Ores, concentrates, residues.
Rutile	Mines; concentrating plants	Ores, concentrates.
Salt	Mines; salt wells; processing plants	Crude materials.
Sand and gravel	Pits; washing and grading plants	Crude sand and gravel.
Selenium	Refineries	Residues, slimes, scrap.
Silicon	Furnaces; metal plants	Metallic additives, silica.

SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS—Continued

1 Commodity	2 Facilities	3 Materials
Silver	Mines; concentrating plants; smelters; refineries; leaching plants.	Ores, concentrates, intermediate smelter products, scrap.
Slag (iron and steel)	Slag processing facilities	Furnace wastes.
Slate	Quarries; splitting, milling, crushing and grading plants.	Crude slate.
Sodium compounds	Mines; brine wells; refineries; synthetic soda ash plants.	Natural and synthetic minerals, brines.
Stone:		
Crushed	Quarries; crushing and grading plants	Broken stone.
Dimension	Quarries; milling and grading	Block stone.
Staurolite	Mines; concentrating plants	Ores.
Strontium	Do	Do.
Sulfur	Mines; wells; processing plants	Ores, gases.
Talc, soapstone and pyrophyllite	Mines; crushing, grinding, screening and concentrating plants.	Ores.
Tantalum	Mines; dredges; concentrating plants; processing plants.	Ores, concentrates, slags, scrap, residues.
Tellurium	Refineries	Residues, slimes.
Thallium	Do	Concentrates, residues.
Tin	Mines; concentrating plants; smelters; refineries; processing plants.	Ores, concentrates, residues, scrap.
Titanium	Mines; concentrating plants; processing plants	Do.
Thorium	Non-energy processing plants	Ores and compounds.
Tungsten, metal and compounds	Mines; concentrating plants; reduction plants; processing plants.	Ores, concentrates, brines, scrap.
Vanadium	Mines; concentrating plants; leaching plants; reduction plants.	Ores, concentrates, residues, slags, metallic additives.
Vermiculite	Mines; beneficiating plants; processing plants	Crude vermiculite.
Wollastonite	Mines; concentrating plants	Ores.
Zeolites	Mines; processing plants	Do.
Zinc	Mines; concentrating plants; roasting plants; smelters; electrolytic plants.	Ores, concentrates, calcines, scrap, fume, residues.
Zirconium	Mines; concentrating and reduction plants	Ores, scrap.

APPENDIX III TO PART 700—FORM ITA-999; REQUEST FOR SPECIAL PRIORITIE ASSISTANCE



OMB No.

FORM ITA-999
(REV 7-84)

U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE
(TO BE FILED WITH SPONSORING GOVERNMENT AGENCY)
READ INSTRUCTIONS ON REVERSE SIDE
(Typewrite or print in ink)

FOR ITA USE ONLY

Case No.

Received

Routed to

No priorities assistance may be granted unless a completed application form has been received (50 U.S.C. App. Sec. 2155). Any information furnished is deemed confidential pursuant to 50 U.S.C. App. Sec 2155(e).

1. TO: *(Fill in name and address of appropriate Sponsoring Govt. Agency)*

2. a. Applicant's name and complete address *(Street, City, State and ZIP code).*

b. Telephone No. *(Include Area Code)* ______________________

c. Contact's Name ______________________

3. Name and address of Applicant's customer

4. Purchase order or contract number of Applicant's customer.

Date ______________________

5. Rating on customer's purchase order.

6. Date Applicant accepted customer's pu order.

7. If known, identify the Government program, end product, and contract number for which Applicant's item(s) is required by customer.

8. Description of item(s) to be delivered or service rendered Applicant through use of item(s) shown in (10).

9. How will item(s) shown in (10) be used? *(Check)*

☐ As Production Material ☐ For Construction Project
☐ As Capital Equipment ☐ As Maintenance, Repair and Operating Supplie

10. ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Indicate quantity *(Lbs., ft., pcs.)* (a)	Description *(As appearing in Applicant's purchase order with additional information, such as: model, part, die number, etc.)* (b)	Approximate dollar va of quantity shown (c)

11. a. Applicant's purchase order number to Supplier and date. *(Attach copy and all amendments and change orders)*

b. Rating on Applicant's purchase order. If none, so state.

c. Date Applicant's purchase order accept by Supplier. *(Attach copy of acceptance)*

12. a. Supplier's name and complete address. *(Street, City, State and ZIP Code)*

b. Contact's name ____________________

c. Telephone number ____________________
(Include Area Code)

d. Supplier's shop order number.

e. If Supplier is an agent or distributor, give producer's name and address. *(Provide name and telephone number, including Area Code, of person to contact and supplier's purchase order number, if known)*

Original Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant

a. Applicant's Original Shipment Requirement	Month Year							▨
	No. of Units							Total units
b. Supplier's Original Shipment Promise	Month Year							▨
	No. of Units							Total units

Current Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant

c. Shipment(s) Now Required by Applicant	Month Year							▨
	No. of Units							Total units
d. Supplier's Present Shipment Promise	Month Year							▨
	No. of Units							Total units

E CONTINUATION BLOCK OR SEPARATE SHEET, IF NECESSARY, FOR ANSWERS TO 14, 15 AND 16 BELOW

Reasons given by Supplier for inability to meet Applicant's required shipment date(s), including interfering rated orders or programs, if known.

List at least two other suppliers contacted. *(If none contacted, explain why)*

Date (a)	Name and complete address (b)	Best quoted shipment date(s) and other pertinent data (c)

Explain the effect of the delay in receipt of item(s) in (10) on the delivery commitment for item(s) in (8); i.e. production stoppage, shipment delays, etc. Describe the attempts to resolve the problems and give specific reasons why special priorities assistance is necessary.

Is quantity shown in 10(a) entire amount on purchase order listed in 11(a)? ☐ Yes ☐ No

Is the same item(s) also on order from another supplier? *(If "yes," explain)* ☐ Yes ☐ No

Does the Applicant have an inventory of the item(s) shown in 10? ☐ Yes ☐ No

If answer to (c) above is yes, state number of days of production the inventory will support. ____________________

State minimum leadtimes. *(Number of days the item(s) in 10 must be received before applicant can ship to customer)* ____________________

FICATION — The undersigned certifies that the information contained in items (2) to (17) of this form, and as any information attached, is and complete to the best of his or her knowledge and belief.

____
Name of applicant

____
Signature and typed name of authorized official

____
Date

____
Title

Code, Title 18 *(Crimes and Criminal Procedure)*, Section 1001, makes it a criminal offense to make a wilfully false statement or representation to any nt or agency of the United States as to any matter within its jurisdiction. The individual company information reported on this form is for use in defense ion activities. The unauthorized publication or disclosure of individual company information by Government personnel is prohibited by law, and such personnel t to fine and imprisonment for unauthorized disclosure.

USCOMM-DC 84-22042

FOR USE OF GOVERNMENT AGENCY ENDORSING THIS REQUEST (FIELD)

18. a. Actions taken to attempt resolution of applicant's problem.

By whom

Date

b. Estimate of realistic shipment date.

c. Coordination of other action taken.

By whom

Date

FOR USE OF GOVERNMENT AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)

19. a. Name of Sponsor.

b. Sponsor's address.

c. Sponsor's Case Reference No.

d. Name of person handling case in Sponsor's office.

Telephone No.

e. Sponsor's program or service to be benefited by Applicant's product or service *(Item (7) on first page).*

f. Recommendation.

g. Statement of urgency of particular program or service and Applicant's part in it. Specify the extent to which failure to obtain request assistance will adversely affect the program or service.

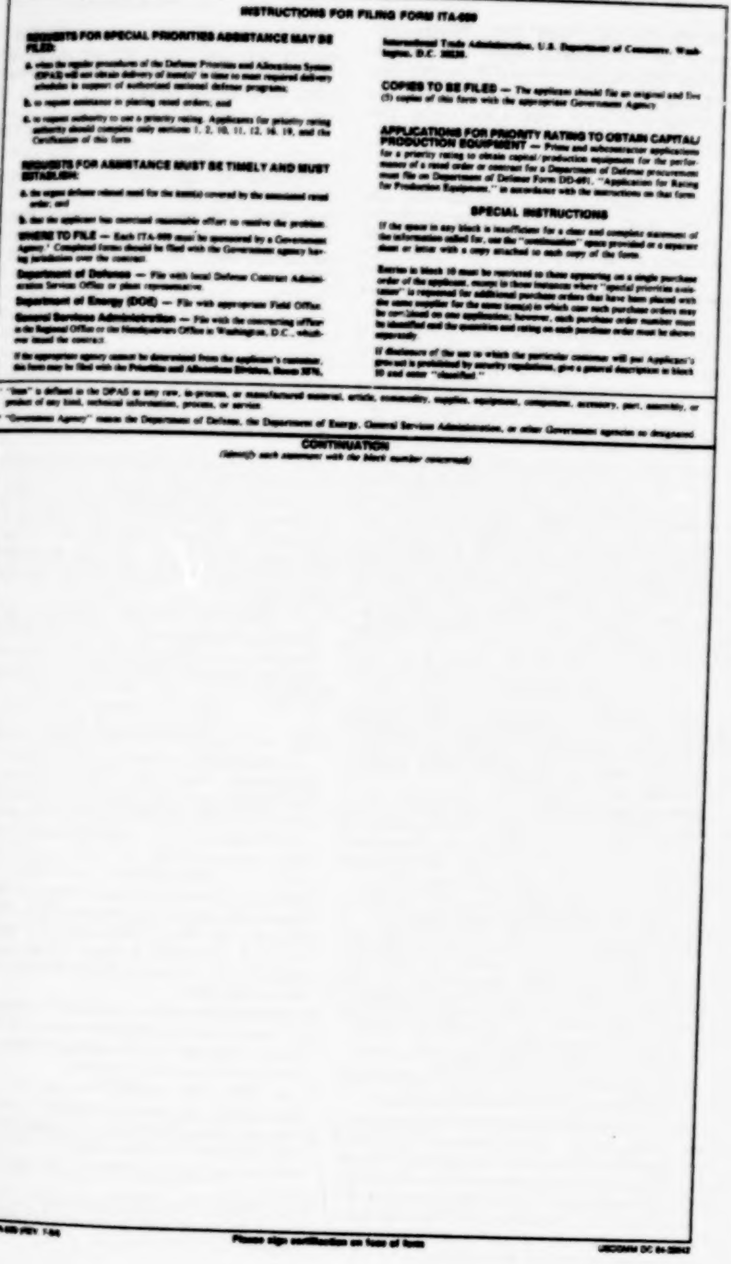
h. Signature.

Signature of sponsor's authorized official

Title

Type name of authorized official

Date



INSTRUCTIONS FOR FILING FORM ITA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE MAY BE FILED:

a. when the regular procedures of the Defense Priorities and Allocations System (DPAS) will not obtain delivery of item(s)[1] in time to meet required delivery schedules in support of authorized national defense programs;

b. to request assistance in placing rated orders; and

c. to request authority to use a priority rating. Applicants for priority rating authority should complete only sections 1, 2, 10, 11, 12, 16, 19, and the Certification of this form.

REQUESTS FOR ASSISTANCE MUST BE TIMELY AND MUST ESTABLISH:

a. the urgent defense related need for the item(s) covered by the associated rated order; and

b. that the applicant has exercised reasonable effort to resolve the problem.

WHERE TO FILE — Each ITA-999 must be sponsored by a Government Agency.[2] Completed forms should be filed with the Government agency having jurisdiction over the contract.

Department of Defense — File with local Defense Contract Administration Services Office or plant representative.

Department of Energy (DOE) — File with appropriate Field Office.

General Services Administration — File with the contracting officer at the Regional Office or the Headquarters Office in Washington, D.C., whichever issued the contract.

If the appropriate agency cannot be determined from the applicant's customer, this form may be filed with the Priorities and Allocations Division, Room 3876, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

COPIES TO BE FILED — The applicant should file an original and five (5) copies of this form with the appropriate Government Agency.

APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/PRODUCTION EQUIPMENT — Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense procurement must file on Department of Defense Form DD-691, "Application for Rating for Production Equipment," in accordance with the instructions on that form.

SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "continuation" space provided or a separate sheet or letter with a copy attached to each copy of the form.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same item(s) in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantities and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customer will put Applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

---

[1] "Item" is defined in the DPAS as any raw, in-process, or manufactured material, article, commodity, supplies, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

[2] "Government Agency" means the Department of Defense, the Department of Energy, General Services Administration, or other Government agencies so designated.

CONTINUATION

(Identify each statement with the block number concerned)

ITA-999 (REV. 7-84)

Please sign certification on face of form

USCOMM-DC 84-[illegible]

APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLOCATIONS SUPPORT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE CANADIAN DEPARTMENT OF SUPPLY AND SERVICES

A. Purpose

Since 1950, the United States and Canada have been assisting each other on priorities and allocations for programs important to the defense of both nations. Details on the implementation of that assistance were spelled out in the U.S. Defense Priorities System Regulation No. 2 (DPS Reg. 2), Operations of the Priorities and Allocations System between Canada and the United States (15 CFR Part 351). The Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) supersedes the Defense Materials System and Defense Priorities System regulations (15 CFR Parts 330 through 351), including DPS Reg. 2. While the revised regulation addresses the procedures for obtaining priorities and allocations support from the United States and Canada, it does not fully detail the working relationship between the United States and Canada. Accordingly, the following Memorandum of Understanding is set forth between the U.S. Department of Commerce and the Canadian Department of Supply and Services.

B. General

1. The Office of Industrial Resource Administration, U.S. Department of Commerce (DOC), is the United States point of contact for the Canadian government with respect to priorities and allocations.

2. The Supply Information and Data Management Branch, Canadian Department of Supply and Services (DSS), is the Canadian point of contact for the U.S. government with respect to priorities and allocations.

C. Priority Rating Authority

1. DOC will authorize the DSS to use priority ratings, including those for the procurement of controlled materials, in the United States in support of the following programs authorized by the Federal Emergency Management Agency:

D1—Canadian Military Programs
D2—Canadian Production and Construction
D3—Canadian Atomic Energy Program

2. DOC must receive requests for priority rating authority, by program, at least ninety days in advance of the calendar quarter in which the authorization is required. Requests with respect to controlled materials requirements must be received at least 240 days in advance of the calendar quarter in which authorization is required.

D. DX Authority

DSS may authorize the use of the "DX rating symbol for procurements in th United States which are in support of U. "DX" rated programs.

E. Items Which Will Not Receive Priority Rating Authority

Priority ratings may not be used for pr curements in the United States of (1) civ ian items for resale in Military Exchange or the packaging for such items; (2) mate al purchased from exclusively retail esta lishments; (3) direct procurement of the Federal Supply Classification class groups, or items specified in Attachment to this Understanding, unless those ite are to be used as production material for a authorized program; or (4) procurement items to be used primarily for administra tive purposes, such as for personnel or nancial management.

F. Special Priorities Assistance

1. DOC will provide special priorities sistance as needed to Canadian procu ments in the United States which are support of D1, D2, and D3 programs wh requests for such assistance are sponsor by DSS.

2. DSS will provide assistance to Uni States procurements in Canada which are support of authorized programs when quests for such assistance are sponsored DOC.

G. Forms and Reports

1. Canadian requests for special priori assistance from the United States will submitted to DOC on Form ITA-999, "R quest for Special Priorities Assistance".

2. Requests for priority rating author will be submitted to DOC on Form DS 1451-1, "Application for U.S. Prior Rating Covering Importation of Quarter Requirements of Materials from the Uni States", on Form DSS-1451-2, "Applica for U.S. Priority Rating Covering Spec Materials", or other forms as may be esta lished by DSS.

3. DSS will report monthly on the num of rating authorizations and their dol value against DOC rating authoriza during the previous month.

4. DSS will report, two months follow the close of each calendar quarter, t number and quantity of controlled mate als allotments issued against DOC autho zations for each program during that qua ter.

5. United States requests for assista from Canada will be submitted to DSS letter.

H. Compliance

1. DSS will ensure that Canadian Government personnel and Canadian defense contractors are in compliance with the provisions of the DPAS when placing rated orders in the United States, including those for controlled materials.

2. DOC will ensure that U.S. Government personnel and U.S. contractors are in compliance with the provisions of the DPAS when placing rated orders in Canada, including controlled materials.

3. The DSS will inform DOC of any alleged violations of the DPAS of which it may become aware.

I. Training

1. The DSS will develop and implement training programs on the DPAS for appropriate Canadian Government procurement and contract administration personnel and contractor personnel.

2. DOC will develop and implement training programs on the DPAS for appropriate U.S. Government procurement and contract administration personnel and contractor personnel.

3. DSS and DOC training programs shall be coordinated to ensure the conduct of a comprehensive program and to minimize duplication.

J. Effective Date

This Memorandum of Understanding shall take effect August 29, 1984.

Canadian Department of Supply and Services
Peter Smith,
Assistant Deputy Minister, Operations

Date: June 26, 1984.

U.S. Department of Commerce
Walter J. Olson,
Deputy Assistant Secretary, Export Administration

Date: June 21, 1984.

ATTACHMENT A—FEDERAL SUPPLY CLASSIFICATION CLASSES, GROUPS, AND ITEMS NOT ELIGIBLE FOR PRIORITY RATINGS

Group

35 Services and trade equipment—except:
  3510 Laundry and dry cleaning equipment
  3520 Shoe repairing equipment
  3530 Industrial sewing machines and mobile textile repair shoes
  3540 Wrapping and packaging machinery
71* Furniture
72* Household and commercial furnishings and appliances—except:
  7240 Household and commercial utility containers
73* Food preparation and serving equipment—except:
  7310 Food cooking, baking and serving equipment
  7320 Kitchen equipment and appliances
  7360 Sets, kits, and outfits: food preparation and serving
74 Office machines, visible record equipment, and data processing equipment**
75* Office supplies and devices
77* Musical instruments, phonographs and home-type radios
78* Recreational and athletic equipment
79 Cleaning equipment and supplies
85* Toiletries
87 [1] Agricultural supplies
89 Subsistence
91* [1] Fuels, lubricants, oils, and waxes—except:
  9135 Liquid propellant fuels and oxidizers, chemical base
  9150 Oils and greases: cutting, lubricating, and hydraulic
  9160 Miscellaneous waxes, oils and fats
94* Non-metallic crude materials—except:
  9420 Fibers: vegetable, animal and synthetic
99* Miscellaneous

Class

7630 Newspapers and periodicals
7660 Sheet and book music
8325 Fur materials
8425 Underwear and nightwear, women's
9610 Ores

PARTS 701—704 [RESERVED]

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Sec.
705.1 Definitions.
705.2 Purpose.
705.3 Commencing an investigation.

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*DOC will consider requests for special priority rating authorization in the procurement of these items.

**This Group does not include general purpose automatic data processing equipment, software, supplies and support equipment (see Group 70).

[1] Only those items subject to DOC authority as delegated by E.O. 10480.

Sec.
705.4 Criteria for determining effect of imports on the national security.
705.5 Request or application for an investigation.
705.6 Confidential information.
705.7 Conduct of an investigation.
705.8 Public hearings.
705.9 Emergency action.
705.10 Report of an investigation and recommendation.

AUTHORITY: Sec. 232, Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended (Pub. L. 100-418, 102 Stat. 1107), Reorg. Plan No. 3 of 1979 (44 FR 69273, Dec. 3, 1979); E.O. 12188 of Jan. 2, 1980 (45 FR 989, Jan. 4, 1980).

SOURCE: 47 FR 14693, Apr. 6, 1982, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

§ 705.1 Definitions.

As used in this part:

"Department" means the United States Department of Commerce and includes the Secretary of Commerce and the Secretary's designees.

"Secretary" means the Secretary of Commerce or the Secretary's designees.

"Applicant" means the person or entity submitting a request or application for an investigation pursuant to this part.

§ 705.2 Purpose.

These regulations set forth the procedures by which the Department shall commence and conduct an investigation to determine the effect on the national security of the imports of any article. Based on this investigation, the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article.

§ 705.3 Commencing an investigation.

Upon request of the head of any government department or agency, upon application of an interested party, or upon motion of the Secretary, the Department shall immediately conduct an investigation to determine the effect on the national security of the imports of any article.

§ 705.4 Criteria for determining effect of imports on the national security.

(a) To determine the effect on the national security of the imports of the article under investigation, the Department shall consider the quantity of the article in question or other circumstances related to its import. With regard for the requirements of national security, the Department shall also consider the following:

(1) Domestic production needed for projected national defense requirements;

(2) The capacity of domestic industries to meet projected national defense requirements;

(3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense;

(4) The growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; and

(5) Any other relevant factors.

(b) In recognition of the close relation between the strength of our national economy and the capacity of the United States to meet national security requirements, the Department shall also, with regard for the quantity, availability, character and uses of the imported article under investigation, consider the following:

(1) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;

(2) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(3) Any other relevant factors that are causing or will cause a weakening of our national economy.

§ 705.5 Request or application for an investigation.

(a) A request or application for an investigation shall be in writing. The original and 12 copies shall be filed with the Director, Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230.

(b) When a request, application or
motion is under investigation, or when
an investigation has been completed
pursuant to § 705.10 of this part, any
subsequently filed request or applica-
tion concerning imports of the same or
related article that does not raise new
or different issues may be either con-
olidated with the investigation in
progress as provided in § 705.7(e) of
his part, or rejected. In either event,
n explanation for taking such action
hall be promptly given to the appli-
ant. If the request or application is
ejected, it will not be returned unless
equested by the applicant.

(c) Requests or applications shall de-
cribe how the quantity, availability,
haracter, and uses of a particular im-
orted article, or other circumstances
elated to its import, affect the nation-
l security, and shall contain the fol-
wing information to the fullest
tent possible:

(1) Identification of the applicant;

(2) A precise description of the arti-
e;

(3) Description of the domestic in-
stry affected, including pertinent in-
rmation regarding companies and
eir plants, locations, capacity and
rrent output of the industry;

4) Pertinent statistics on imports
d domestic production showing the
antities and values of the article;

5) Nature, sources, and degree of
competition created by imports of
article;

6) The effect that imports of the ar-
e may have upon the restoration of
nestic production capacity in the
nt of national emergency;

) Employment and special skills in-
ed in the domestic production of
article;

) Extent to which the national
nomy, employment, investment,
ialized skills, and productive ca-
ty is or will be adversely affected;

) Revenues of Federal, State, or
l Governments which are or may
dversely affected;

0) National security supporting
of the article including data on
applicable contracts or sub-contracts, both past and current; and

(11) Any other information or advice relevant and material to the subject matter of the investigation.

(d) Statistical material presented should be, if possible, on a calendar-year basis for sufficient periods of time to indicate trends. Monthly or quarterly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

§ 705.6 Confidential information.

(a) Any information or material which the applicant or any other party desires to submit in confidence at any stage of the investigation that would disclose national security classified information or business confidential information (trade secrets, commercial or financial information, or any other information considered sensitive or privileged), shall be submitted on separate sheets with the clear legend "National Security Classified" or "Business Confidential," as appropriate, marked at the top of each sheet. Any information or material submitted that is identified as national security classified must be accompanied at the time of filing by a statement indicating the degree of classification, the authority for the classification, and the identity of the classifying entity. By submitting information or material identified as business confidential, the applicant or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act (5 U.S.C. 552 et seq.) or by some other specific statutory exemption. Any request for business confidential treatment must be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed.

(b) The Department may refuse to accept as business confidential any information or material it considers not intended to be protected under the legal authority claimed by the applicant, or under other applicable legal authority. Any such information or material so refused shall be promptly returned to the submitter and will not be considered. However, such information or material may be resubmitted as non-confidential in which case it will be made part of the public record.

§ 705.7 Conduct of an investigation.

(a) If the Department determines that it is appropriate to afford interested parties an opportunity to present information and advice relevant and material to an investigation, a public notice shall be published in the Federal Register soliciting from any interested party written comments, opinions, data, information or advice relative to the investigation. This material shall be submitted as directed within a reasonable time period to be specified in the notice. All material shall be submitted with 6 copies. In addition, public hearings may be held pursuant to § 705.8 of this part.

(b) All requests and applications filed and all material submitted by interested parties, except information on material that is classified or determined to be confidential as provided in § 705.6 of this part, will be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, U.S. Department of Commerce, Washington, DC 20230, in accordance with regulations published in Part 4 of Title 15, Code of Federal Regulations.

(c) Further information may be requested by the Department from other sources through the use of questionnaires, correspondence, or other appropriate means.

(d) The Department shall, as part of an investigation, seek information and advice from, and consult with, the Secretary of Defense and any other appropriate officers of the United States or their designees, as shall be determined. Communications received from agencies of the U.S. Government or foreign governments will not be made available for public inspection. The Department may also seek assistance in the conduct of an investigation from other agencies of the United States, as shall be necessary.

(e) Any request or application that is filed while an investigation is in progress, concerning imports of the
same or related article and
similar issues, may be conso
with the request, applicati
motion that initiated the inv
tion.

[47 FR 14693, Apr. 6, 1982. Redesign
54 FR 601, Jan. 9, 1989 and amende
FR 19355, May 5, 1989]

§ 705.8 Public hearings.

(a) If it is deemed appropriate
Department, public hearings m
held to elicit further information.

(1) A notice of hearing shall be
lished in the Federal Registe
scribing the date, time, place, the
ject matter of each hearing and
other information relevant to the
duct of the hearing. The name
person to contact for additional
mation or to request time to spe
the hearing shall also be inclu
Public hearings may be held in
than one location.

(2) Hearings shall be open to
public unless national security cl
fied information will be presented
that event the presiding officer at
hearing shall close the hearing, as
essary, to all persons not having
propriate security clearances or
otherwise authorized to have acces
such information. If it is known in
ficient time prior to the hearing
national security classified infor
tion will be presented the notice
hearing published in the Federal R
ister shall state that national secur
classified information will be prese
ed and that the hearing will be op
only to those persons having approp
ate security clearances or otherw
specifically authorized to have acc
to such information.

(b) Hearings shall be conducted
follows:

(1) The Department shall appo
the presiding officer;

(2) The presiding officer shall dete
mine all procedural matters during
hearing;

(3) Interested parties may appe
either in person or by representati
and produce oral or written inform
tion relevant and material to the su
ject matter of the investigation;

(4) Hearings will be fact-finding p
ceedings without formal pleadings

adverse parties. Formal rules of evidence will not apply;

(5) After a witness has testified, the presiding officer may question the witness. Questions submitted to the presiding officer in writing by any interested party may, at the discretion of the presiding officer, be posed to the witness. No cross examination of any witness by a party shall be allowed.

(6) Each hearing will be stenographically reported. Transcripts of the hearing, excluding any national security classified information, may be purchased from the Department at actual cost of duplication, and will be available for public inspection in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, U.S. Department of Commerce, Washington, DC 20230.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989]

§ 705.9 Emergency action.

In emergency situations, or when in the judgment of the Department, national security interests require it, the Department may vary or dispense with any or all of the procedures set forth in § 705.7 of this part.

§ 705.10 Report of an investigation and recommendation.

(a) When an investigation conducted pursuant to this part is completed, a report of the investigation shall be promptly prepared. The report shall be organized in several sections, if necessary. One section shall contain all information and material that is not classified or confidential as provided in § 705.6 of this part. Another section shall contain all national security classified information and material. A third section shall contain all business confidential information and material.

(b) The Secretary shall report to the President the findings of the investigation and a recommendation for action or inaction within one year after receiving a request or application or otherwise beginning an investigation pursuant to this part.

(c) The Executive Summary of the report, excluding the sections containing national security classified and business confidential information and material, shall be published in the FEDERAL REGISTER upon the disposition of each request, application, or motion made pursuant to this part. Copies of the full report will then be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, U.S. Department of Commerce, Washington, DC 20230.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989]

PARTS 706—709 [RESERVED]

SUBCHAPTER B—[RESERVED]

PARTS 710—729 [RESERVED]

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PARTS 730—767 [RESERVED]

PART 768—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

Sec.

768.1 Effect of regulation.
768.2 International Import Certificate.
768.3 Delivery Verification Certificate.
768.4 Penalties and sanctions for violations.

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

EDITORIAL NOTE: Part 368 was redesignated as Part 768 at 53 FR 37751, Sept. 28, 1988.

§ 768.1 Effect of regulation.

(a) *Representations and commodities covered*—(1) *General.* The United States and a number of other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an import certificate/delivery verification (IC/DV) procedure. This procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the government of the importing country that he will import specific commodities into the economy of that country and will not reexport such commodities except in accordance with the export control regulations of that country. The government of the importing country, in turn, certifies that such representations have been made.

(2) *Commodities covered and administering U.S. Agencies*—(i) *The Bureau of Export Administration.* The Bureau of Export Administration will receive from importers in the United States the representations regarding the intended destination of commodities and will provide a certification that such representations have been made (A) for commodities under the export control jurisdiction of the Office Export Licensing that are identif by the code letter "A" following Export Control Commodity Numb on the Commodity Control List (Su plement No. 1 to § 799.1); (B) agreement with the Nuclear Regul tory Commission for nuclear equi ment and materials under the expo licensing jurisdiction of the Comm sion (see 10 CFR Part 110); and (C) agreement with the U.S. Treasury D partment for commodities on the U. Munitions List (22 CFR Part 121) th do not appear on the more limit U.S. Munitions Import List (27 CF 47.21).

(ii) *Treasury Department.* The U. Treasury Department, Bureau of Alc hol, Tobacco and Firearms, Washin ton, DC 20224, administers similar pr cedures with respect to arms, ammu tion, and implements of war as en merated in the U.S. Munitions Impo List (27 CFR 47.21).

(iii) *State Department.* The U.S. D partment of State, Office of Munitio Control, Washington, DC 20520, a ministers similar procedures with r spect to *triangular* transactions invol ing any part of the U.S. Munitio List. (See § 768.2(a)(8) of this part fo a description of triangular Import Ce tificates issued by the U.S. Depar ment of Commerce.)

(b) *Exports.* Comparable procedu with respect to exports from th United States are described in Pa 775.

[44 FR 30317, May 25, 1979, as amended 45 FR 40576, June 16, 1980; 46 FR 868, Ja 5, 1981; 46 FR 38349, July 27, 1981. Redes nated at 53 FR 37751, Sept. 28, 1988 a amended at 54 FR 13055 and 13057, Mar. 1989]

§ 768.2 International Import Certificate.

(a) *Procedure*—(1) *General.* Where person in the United States purcha or expects to receive commoditi from one of the foreign countries pa ticipating in the IC/DV procedure a is required by the government of th exporting country to furnish Import Certificate, that person sh use the Form ITA-645P, ATF-452

)SP-53, International Import Certifiate. All items on the International mport Certificate are required to be ompleted. The form shall be sent to he Office of Export Licensing or the earest District Office listed in pararaph (a)(2) of this section, in tripliate for commodities on the Commodi- Control List, and in quadruplicate r nuclear related commodities. Repsentations by the importer that the ommodities will be entered into the nited States do not preclude the temrary unloading of the commodities a foreign trade zone for subsequent try into the economy of the United ates.

(2) *Where to file.* Except as noted in ragraphs (a) (4) and (5) of this secn, send all requests for certification d validation of International Import rtificates or requests to amend cericates to:

i) Office of Export Licensing, P.O. x 273, Washington, DC 20044, or

ii) One of the following District Ofes of the Department of Commerce: ston, Buffalo, Chicago, Cincinnati, uston, Los Angeles, Miami, Newark, oenix, Pittsburgh, Portland, Oreg., Louis, Cleveland, Dallas, Detroit, Orleans, New York, Philadelphia, Francisco, Savannah, Seattle.

3) *Presentation and validation.* The ernational Import Certificate may presented for validation either in son or by mail. The validated form be returned to the U.S. importer dispatched by him to the foreign orter or otherwise disposed of in ordance with the regulations of the orting country.

) [Reserved]

) *Certain U.S. Munitions List modities.* For commodities on the Munitions List that do not appear the more limited U.S. Munitions ort List, a request for certification validation of an International ort Certificate shall be submitted, riplicate, directly to the Office of ort Licensing.

) *Validity period.* (i) The Internaal Import Certificate must be subed to the foreign government in six months from the date of ification by the U.S. Department Commerce. The expiration of this month period in no way affects the responsibility of the importer to fulfill the commitments made in obtaining the Certificate.

(ii) Where the validity period of a Certificate has expired before its presentation to the foreign government and an extension is desired, the U.S. importer should apply for a new Certificate. (See paragraph (a)(12)(ii) of this section for unused Certificates.)

(7) *Statements and representations.* All statements and representations made in an International Import Certificate, and in any amendment thereto, shall be deemed to be continuing in nature until the transaction described in the Certificate is completed and the commodities are delivered into the economy of the importing country. Any change of fact or intention in regard to the transaction set forth in the Certificate shall be promptly disclosed to the Office of Export Licensing by the U.S. importer by presentation of an amended Certificate that sets forth all the changes and is accompanied by the original Certificate bearing the certification of the Office of Export Licensing. If the original Certificate has been transmitted by the U.S. importer to his foreign exporter, the importer shall, wherever possible, obtain the original Certificate prior to applying for an amendment. Where the original Certificate is unobtainable because the foreign exporter has surrendered it to his government, or for any other valid reason, the importer shall submit a written statement giving his reasons for failure to submit the original Certificate.

(8) *Triangular transaction* (commodities not entering the United States). In accordance with international practice, the government office issuing the International Import Certificate will, upon request, stamp the Certificate with a triangular symbol as notification to the government of the exporting country that the importer is uncertain whether the commodities will be imported into the United States or that he knows the commodities will not be imported into the United States, but that, in any case, the commodities will not be delivered to any other destination except in accordance with the U.S. Export Administration Regulations. A triangular Certificate

will not be issued covering foreign excess property sold abroad by the U.S. Department of Defense. The triangular symbol on a Certificate is not, in and of itself, an approval by the Office of Export Licensing to transfer or sell commodities to a foreign consignee. (See paragraph (a)(9) below for method of obtaining such approval.)

(9) *Approval of shipment, transfer, or sale of commodities to a foreign consignee before delivery under International Import Certificate.* (i) The written approval of the Office of Export Licensing is required *before* commodities covered by a U.S. International Import Certificate, whether or not bearing a triangle, may be shipped to a destination other than the United States or Canada or sold to a foreign purchaser, and *before* title to or possession of such commodities may be transferred to a foreign transferee.[1] This requirement does not apply

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[1] The attention of U.S. purchasers is directed to the Transaction Control Regulations of the U.S. Treasury Department (Title 31 of the Code of Federal Regulations, sections 505.01 *et seq.*) These Regulations prohibit persons within the United States, and subsidiaries and branches of U.S. firms located abroad, from purchasing or selling, or arranging the purchase or sale, without a Treasury Department license, of certain strategic merchandise located in any foreign country when the transaction involves a shipment of such merchandise from any foreign country to the People's Republic of China or a county in Country Group Q, W, Y, or Z (except Cuba, for which the Cuban Assets Control Regulations mentioned below restrict shipments to Cuba). The merchandise subject to this Regulation is identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1) or is of a type, the unauthorized exportation of which from the United States is prohibited by regulations issued under section 414 of the Mutual Security Act of 1954, as amended (68 Stat. 848, 22 U.S.C. 1934), relating to arms, ammunition, and implements of war or under Sections 53(a), 62, 82(c), 103 and 104 of the Atomic Energy Act of 1954, as amended (68 Stat. 930, 932, 935, 936, 937; 42 U.S.C. 2073 (a), 2092, 2112(c), 2133, 2134), relating to atomic energy facilities or materials for use for non-military purposes. A Treasury Department general license (§ 505.31) authorizes transactions otherwise prohibited by the Regulations with respect to shipments of such merchandise from COCOM mem countries to countries other than Nor Korea, Vietnam, Cambodia, and Cuba, pr vided the shipment has been licensed by t exporting country. The People's Republic China was included in this general licen by amendment dated February 16, 1972.

The attention of purchasers is also direc ed to the Foreign Assets Control Regu tions and the Cuban Assets Control Regu tions of the U.S. Treasury Departme (Title 31 of the Code of Federal Regu tions, sections 500.101 *et seq.* and 515.101 *seq.*). These regulations prohibit perso subject to the jurisdiction of the Uni States from engaging in any unlicens transactions with North Korea, Vietna Cambodia, Cuba, or nationals thereof, or any unlicensed transactions involving pro erty in which North Korea, or nationa thereof, have or have had any intere direct or indirect, since December 17, 19 in which Vietnam or nationals thereof, ha or have had any interest, direct or indire since May 5, 1964; in which Cuba or natio als thereof, have or have had any intere direct or indirect, since July 8, 1963 which Cambodia or nationals thereof, ha or have had any interest, direct or indire since April 17, 1975; or in which Vietnam nationals thereof, have or have had any terest, direct or indirect, after noon, E.D. April 30, 1975. These regulations also pr hibit persons subject to the jurisdiction the United States from engaging in any licensed transactions with respect to me chandise outside the United States if su merchandise is of North Korean, Vietna ese, Cambodian, or Cuban origin. Simila restrictions in the Foreign Assets Contr Regulations formerly in effect with respe to the People's Republic of China and na tionals thereof have been removed exce with respect to transactions in strate merchandise of U.S.-owned and controlle foreign firms, and U.S. citizens resid abroad. (See above for description of gen al license.) It should be noted that assets the United States of the People's Repub of China and its nationals which we blocked as of May 7, 1971, remain block notwithstanding the above-mention changes in the Treasury's Foreign Ass Control and Transaction Control Regu tions.

A Statement of Licensing Policy in t Cuban Assets Control Regulations provi that licenses are issued for certain tra transactions with Cuba by U.S.-owned controlled firms in third countries whe the law or policy of the country requires favors trade with Cuba, except that so classes or transactions will not be autho ized. The latter include transactions invo ing strategic commodities; U.S.-origin tec

Continu

after the commodities have been delivered in accordance with the undertaking set forth in the Certificate.

(ii) If prior approval is required, a letter (OMB approval No. 0625-0007), requesting authorization to release the shipment shall be submitted to—Office of Export Licensing, P.O. Box 273, Washington, DC 20044. The letter shall contain the International Import Certificate number; date issued; location of the issuing office; names, addresses, and identities of all parties to the complete transaction; and the quantity, dollar value, and description of the commodity. The letter shall be accompanied by an International Import Certificate, an ultimate consignee statement, or other documentation required by the Export Administration Regulations for the country of ultimate destination, as provided for license applications in §§ 775.1, 775.2, 775.3, 775.4 and 775.5. Where none of these sections applies to the transaction, the letter shall include the intended end-use of the commodities.

(iii) Where the letter request is approved and is supported by a foreign import certificate (other than a Swiss Blue Import Certificate), no further approval from the Office of Export Licensing is required for the purchaser or transferee to resell or again transfer the commodities. However, where the Office of Export Licensing approves a request that was *not* supported by a foreign import certificate, the person to whom approval is granted is required to inform the purchaser or transferee, in writing, that the commodities are to be shipped to the approved destination *only* and that not other disposition of the commodities is permitted without the approval of the Office of Export Licensing. (Authority to further resell or transfer the commodities does not relieve any person from complying with foreign laws. See § 773.1(b).)

(iv) If the transaction is approved, a validated letter of approval will be sent to the U.S. purchaser for retention in his records. Where a Delivery Verification Certificate or other official government confirmation of delivery is required, the letter will so indicate.

(v) If the commodities covered by an International Import Certificate have been imported into a destination other than the United States and the foreign exporter of the commodities requests a Delivery Verification Certificate, the person who obtained the International Import Certificate shall obtain a Delivery Verification Certificate from the person to whom the commodities were delivered in the actual importing country. (If a Delivery Verification Certificate is unobtainable, other official government confirmation of delivery shall be obtained.) The Delivery Verification Certificate or other official government confirmation of delivery shall be submitted to the Office of Export Licensing together with an explanatory letter giving the Import Certificate number, date issued, and location of issuing office. The Office of Export Licensing will then issue a Delivery Compliance Notice, Form DIB-6008, in two copies, the original of which shall be forwarded to the country of origin in order to serve as evidence to the exporting country that the requirements of the U.S. Government have been satisfied with respect to delivery of the commodities.

(10) *Delivery, sale, or transfer of commodities to another U.S. purchaser.* (i) Commodities covered by an International Import Certificate may not be sold, and title to or possession of such commodities may not be transferred, to another U.S. purchaser or transferee before the commodities are delivered to the United States (or to an approved foreign destination, as provided by paragraph (a)(8) above), except in accordance with the provi-

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nical data, (other than maintenance date); U.S.-origin parts and components, unless authorized by the Commerce Department; the reexportation to Cuba of any U.S.-origin spares, unless authorized by Commerce; U.S.-dollar accounts; or any financing or extension of credit, except on short-term conditions normal and appropriate for the commodity involved.

Any questions concerning the Transaction Control Regulations, the Foreign Assets Control Regulations, the Cuban Assets Control Regulations, or the Rhodesian Sanctions Regulations should be submitted to the Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.

sions described in paragraph (a)(10)(ii) of this section. The provisions of this paragraph do not apply *after* the commodities have been delivered in accordance with the undertaking set forth in the Certificate.

(ii) Resale or transfer to another U.S. purchaser or transferee requires the prior approval of the Office of Export Licensing *only* in cases where the buyer or transferee is listed in Supplement No. 1 to Part 788, Table of Denial and Probation Orders. However, the person who obtained the International Import Certificate is required to notify the Office of Export Licensing of any change in facts or intentions relating to the transaction, and in all cases that person is held responsible for the delivery of the commodities in accordance with the Export Administration Regulations. The seller or transferor is therefore required in all cases to secure, prior to sale or transfer, and to retain in his files for two years, written acceptance by the purchaser or transferee of (*a*) all obligations undertaken by, and imposed under the Export Administration regulations, upon the holder of the Certificate; and (*b*) an undertaking that all subsequent sales or transfers will be made subject to the same conditions.

(iii) The responsibility of the International Import Certificate holder for obtaining a Delivery Verification Certificate also applies to those cases where the commodities are resold to a U.S. purchaser. This is explained fully in § 768.3(a)(1) of this part.

(11) *Reexport or transhipment of commodities after delivery to United States.* Commodities imported into the United States under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the provisions of General License *GIT* (see § 771.4). However, all other provisions of the Export Administration Regulations applicable to commodities of domestic origin shall apply to the reexport of commodities of foreign origin shipped to the United States under a U.S. International Import Certificate.

(12) *Lost, destroyed, or unused International Import Certificates*—(i) *Lost or destroyed Certificates.* Where an International Import Certificate is lost or destroyed, a duplicate copy may be obtained by the person in the United States who executed the original Certificate by submitting to any of the offices listed in § 768.2(a)(2) new Forms ITA-645P and DIB-646 in the same way as an original request, except that the forms shall be accompanied by a letter detailing the circumstances under which the original International Import Certificate was lost or destroyed and certifying:

(A) That the original International Import Certificate No. ———, dated ———, issued to (*name and address of U.S. importer*) for import from (*foreign exporter's name and address*) has been lost or destroyed; and

(B) That if the original International Import Certificate is found, the applicant agrees to return the original or duplicate of the Certificate to the Office of Export Licensing.

(ii) *Unused Certificates.* If the transaction will not be completed and the International Import Certificate will not be used, return the certificate for cancellation to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

(Approved by the Office of Management and Budget under control number 0625-0064)

[44 FR 30317, May 25, 1979, as amended at 44 FR 75382, Dec. 19, 1979; 45 FR 5930 Sept. 9, 1980; 46 FR 21155, Apr. 9, 1981; 4 FR 38349, July 27, 1981; 47 FR 15107, Apr. 8, 1982; 48 FR 53064, Nov. 23, 1983; 50 FR 29205, July 18, 1985; 51 FR 12838, Apr. 1 1986; 51 FR 30632, Aug. 28, 1986; 52 FR 31754, Aug. 24, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 768.3 Delivery Verification Certificate.

(a) *Requirements*—(1) *General.* (i) U.S. importers may be requested by their foreign suppliers to furnish them with a certified U.S. Delivery Verification Certificate, Form DIB-647P covering commodities imported into the United States. These requests are made by foreign governments to assure that strategic commodities shipped to the United States are not diverted from their intended destination. In these instances, the issuance of an export license by the foreign country is conditioned upon the subse quent receipt of a Delivery Verification Certificate from the U.S. importer.

(ii) The responsibility of a person or firm executing a U.S. International Import Certificate for providing the foreign exporter with confirmation of delivery of the commodities includes instances where the commodities are resold or transferred to another U.S. person or firm prior to actual delivery to the United States or to an approved foreign destination. The person who executed the Certificate shall secure in writing from the U.S. purchaser or transferee, and retain in his files for two years, (*a*) acceptance of the obligation to provide him with either the Delivery Verification Cerificate (or other official government confirmation of delivery if a Delivery Verification Certificate is unobtainable) or assurance that this document was submitted to the Office of Export Licensing; and (*b*) an undertaking that each succeeding U.S. transferee or purchaser will assume the same obligation or assurance. In each case the seller or transferor shall transmit to the U.S. purchaser or transferee the identification number of the International Import Certificate covering the export from the foreign country and request hat they pass it on to any other U.S. urchasers or transferees.

(iii) Failure of the U.S. importer to omply with his foreign exporter's reuest for a Delivery Verification Cerificate will result in the exporter's inbility to fulfill his obligation to his overnment and may result in his eing denied further export licenses nd/or subjected to other penalties. bviously, this would prevent the U.S. nporter from participating in further nport transactions with that foreign xporter. It also may result in the U.S. nporter being prevented from trading ith the exporting country requesting e Delivery Verification Cerificate.

(2) *Completion and disposition of elivery Verification Certificates.* A S. importer who is required by the reign government to obtain Form B-647P shall present the certificate, duplicate, to a U.S. customs office. *Delivery Verification Certificate will certified by a U.S. customs office ly where the import is made under a warehouse or consumption entry.* Form DIB-647P shall be completed by the U.S. importer in all respects *except* as to type of customs entry (warehouse or consumption), entry number, date of entry, and the certification signature and date (all contained in the "For Official Use Only" space at the bottom of the form). The commodities shall be described on the form in the same terms as those shown on the related International Import Certificate. The importer shall dispatch the original of the certified Delivery Verification Certificate to the foreign exporter or otherwise dispose of it in accordance with the instructions of the exporting country. The duplicate copy will be retained by the U.S. customs office. Form DIB-647P may be obtained from sources listed in § 770.12 and from U.S. customs offices.

(3) *Issuance of U.S. Delivery Compliance Notice in lieu of Delivery Verification Certificate.* Where a U.S. party is required to provide a Delivery Verification Certificate but does not wish to disclose the name of his customer to the foreign supplier (*e.g.,* in the event that the commodities are resold or transferred to another person or firm before the commodities enter the United States), he may submit an authenticated Form ITA-647P together with an explanatory letter requesting a Delivery Compliance Notice, to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. The Office of Export Licensing will then provide the U.S. party with an original and a copy of an authenticated Delivery Compliance Notice signifying that the commodities were imported into the United States and that a satisfactory U.S. Delivery Verification Certificate has been submitted to the Office of Export Licensing. The U.S. party shall forward the original to the foreign supplier for submission to the foreign government and retain the copy in its files.

(4) *Lost or destroyed Delivery Verification Certificate.* When a Delivery Verification Certificate is lost or destroyed, the U.S. importer shall submit a letter to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

In the letter, the U.S. importer shall certify:

(i) That the original Delivery Verification Certificate has been lost or destroyed;

(ii) The circumstances under which it was lost or destroyed;

(iii) The type of customs entry (warehouse or consumption), entry number, and date of entry; and

(iv) The number and date of the related International Import Certificate.

The Office of Export Licensing will, in applicable cases, notify the exporting government that a Delivery Verification Certificate has been issued.

(Approved by the Office of Management and Budget under control number 0625-0063)

[44 FR 30317, May 25, 1979, as amended at 47 FR 15107, Apr. 8, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 768.4 Penalties and sanctions for violations.

(a) *Administrative.* The enforcement provisions of Part 787 and § 790.2(a), and the sanctions set forth in § 788.1(a) of the Export Administration Regulations shall apply to transactions involving imports into the United States covered by this part and to both foreign and U.S. parties involved in a violation of this part. Any provisions of Part 787 and § 790.2(a) which, by their terms, relate to "exports" or "exports from the United States" are also deemed to apply and extend to imports into the United States, applications for International Import Certificates (Form ITA-645P presented to U.S. Department of Commerce for certification), International Import Certificates, and Delivery Verification Certificates, dealt with in this part. (Applications for International Import Certificates and Delivery Verification Certificates, as specified in this part, are included within the definition of export control documents set forth in § 770.2(a)(17) of the Export Administration Regulations.)

(b) *Criminal.* The False Statements Act makes it a criminal offense to make a willfully false statement or conceal a material fact, or knowingly use a document containing a false statement, in any matter within the jurisdiction of a U.S. department or agency. Maximum penalties under this provision are $10,000 fine or imprisonment for five years, or both. In addition, a knowing violation of the Export Administration Act or any regulation, order, or license issued under the Act generally is punishable by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than 5 years, or both. Willful violations are punishable by fines or imprisonment, or both. (*See* also § 787.1(a).)

[44 FR 30317, May 25, 1979, as amended at 47 FR 57677, Dec. 28, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 769—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

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EDITORIAL NOTE: Part 369 was redesignated as Part 769 at 53 FR 37751, Sept. 28, 1988.

§ 769.1 Definitions.

(a) *Definition of "person"*. For purposes of this part, the term "person" means any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This definition of "person" includes both the singular and plural and, in addition, includes:

(1) Any partnership, corporation, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes;

(2) Any government, or any department, agency, or commission of any government,

(3) Any trade association, chamber of commerce, or labor union;

(4) Any charitable or fraternal organization; and

(5) Any other association or organization not specifically listed above.

(b) *Definition of "United States person"*. (1) Part 769 applies to United States person. For purposes of this part, the term "United States person" means any person who is a United States resident or national, including individuals, domestic concerns, and controlled in fact foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns. This definition of "United States person" includes both the singular and plural and, in addition, includes:

(i) The government of the United States or any department, agency, or commission thereof;

(ii) The government of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any subdivision, department, agency, or commission of any such government;

(iii) Any partnership, corporation, company, association, or other entity organized under the laws of paragraphs (b)(1) (i) or (ii) of this section;

(iv) Any foreign concern's subsidiary, partnership, affiliate, branch, office, or other permanent establishment in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(v) Any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by such domestic concern. (See paragraph (c) of this section on "definition of 'controlled in fact'.")

(2) The term "domestic concern" means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction named in (b)(1) (i) and (ii) of this section, or any permanent domestic establishment of a foreign concern.

(3) The term "foreign concern" means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction other than those named in (b)(1) (i) and (ii) of this section.

(4) The term "United States person" does not include an individual United States national who is resident outside the United States and who is either: (i) Employed permanently or temporarily by a non-United States person or (ii) assigned to work as an employee for, and under the direction and control of, a non-United States person.

EXAMPLES OF "UNITED STATES PERSON"

The following examples are intended to give guidance in determining whether a person is a "United States person". They are illustrative, not comprehensive.

(i) U.S. bank A has a branch office in foreign country P.

Such branch office is a United States person, because it is a permanent foreign establishment of a domestic concern.

(ii) Ten foreign nationals establish a manufacturing plant, A, in the United States, incorporating the plant under New York law.

A is a United States person, because it is a corporation organized under the laws of one of the states of the United States.

(iii) A, a foreign corporation, opens an office in the United States for purposes of soliciting U.S. orders. The office is not separately incorporated.

A's U.S. office is a United States person, because it is a permanent establishment, in the United States, of a foreign concern.

(iv) A, a U.S. individual, owns stock in foreign corporation B.

A is a United States person. However, A is not a "domestic concern", because the term "domestic concern" does not include individuals.

(v) A, a foreign national resident in the United States, is employed by B, a foreign corporation.

A is a United States person, because he is resident in the United States.

(vi) A, a foreign national, who is resident in a foreign country and is employed by a foreign corporation, makes occasional visits to the United States, for purposes of exploring business opportunities.

A is not a United States person, because he is not a United States resident or national.

(vii) A is an association of U.S. firms organized under the laws of Pennsylvania for the purpose of expanding trade.

A is a United States person, because it is an association organized under the laws of one of the states of the United States.

(viii) At the request of country Y, A, an individual employed by U.S. company B, is transferred to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the transfer provided he is able to retain his insurance, pension, and other benefits. Accordingly, company B has agreed to keep A as an employee in order to protect his employee benefits, and company C has agreed to pay for A's salary. At all times while he works for C, A will be under C's direction and control.

A is not a United States person while under C's direction and control, because he will be resident outside the United States and assigned as an employee to a non-United States person. The arrangement designed to protect A's insurance, pension, and other benefits does not destroy his status as an employee of C so long as he is under the direction and control of C.

(ix) A, a U.S. citizen, has resided in Europe for three years, where he is a self-employed consultant for United States and foreign companies in the communications industry.

A is a United States person, because he is a U.S. national and because he is not a resident outside the United States who is employed by other than a United States person.

(c) *Definition of "controlled in fact".* (1) Part 769 applies to any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is "controlled in fact" by such domestic concern. "Control in fact" consists of the authority or ability of a domestic concern to establish the general policies or to control day-to-day operations of its foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment.

(2) A foreign subsidiary or affiliate of a domestic concern will be presumed to be controlled in fact by that domestic concern, subject to rebuttal by competent evidence, when:

(i) The domestic concern beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the foreign subsidiary or affiliate;

(ii) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or affiliate, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(iii) The foreign subsidiary or affiliate is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(iv) A majority of the members of the board of directors of the foreign subsidiary or affiliate are also members of the comparable governing body of the domestic concern;

(v) The domestic concern has authority to appoint the majority of the members of the board of directors of the foreign subsidiary or affiliate; or

(vi) The domestic concern has authority to appoint the chief operating officer of the foreign subsidiary or affiliate.

(3) A brokerage firm or other person which holds simple record ownership of securities for the convenience of clients will not be deemed to control the securities.

(4) A domestic concern which owns directly or indirectly, securities that are immediately convertible at the option of the holder or owner into voting securities is presumed to own or control those voting securities.

(5) A domestic concern's foreign branch office or other unincorporated permanent foreign establishment is deemed to be controlled in fact by such domestic concern under all circumstances.

EXAMPLES OF "CONTROLLED IN FACT"

The following examples are intended to give guidance in determining the circumstances in which a foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern is "controlled in fact". They are illustrative, not comprehensive.

(i) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(ii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has an exclusive management contract with B pursuant to which A is operated by B.

As long as such contract is in effect, A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has 10 persons on its board of directors. Six of those persons are also members of the board of directors of U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iv) Company A is incorporated in a foreign country. Thirty percent of the voting securities of A is owned by U.S. company B and no other person owns or controls an equal or larger share.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(v) Company A is incorporated in a foreign country. In A's articles of incorporation, U.S. company B has beeen given authority to appoint A's board of directors.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vi) Company A is a joint venture established in a foreign country, with equal participation by U.S. company B and foreign company C. U.S. Company B has authority to appoint A's chief operating officer.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vii) Same as (vi), except that B has no authority to appoint A's chief operating officer.

B is not presumed to control A. absent other facts giving rise to a presumption of control.

(viii) Company A is incorporated in a foreign country. U.S. companies B, C, and D each own 20 percent of A's voting securities and regularly cast their votes in concert.

A is presumed to be controlled in fact by B, C, and D, because these companies are acting in concert to control A.

(ix) U.S. bank B located in the United States has a branch office, A, in a foreign country. A is not separately incorporated.

A is deemed to be controlled in fact by B, because A is a branch office of a domestic concern.

(x) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by company B, which is incorporated in another foreign country. Fifty-one percent of the voting stock of B is owned by C, a U.S. company.

Both A and B are presumed to be controlled in fact by C. The presumption of C's control over B may be rebutted by competent evidence showing that control over B does not, in fact, lie with C. The presumption of B's control over A (and thus C's control over A) may be rebutted by competent evidence showing that control over A does not, in fact, lie with B.

(xi) B, a U.S. individual, owns 51 percent of the voting securities of A, a manufacturing company incorporated and located in a foreign country.

A is not "controlled in fact" under this part, because it is not controlled by a "domestic concern."

(d) *Definition of "activities in the interstate or foreign commerce of the United States".*

ACTIVITIES INVOLVING UNITED STATES PERSONS LOCATED IN THE UNITED STATES

(1) For purposes of this part, the activities of a United States person located in the United States are in the interstate or foreign commerce of the United States if they involve the sale, purchase, or transfer of goods or services (including information) between:

(i) Two or more of the several States (including the District of Columbia);

(ii) Any State (including the District of Columbia) and any territory or possession of the United States;

(iii) Two or more of the territories or possessions of the United States; or

(iv) A State (including the District of Columbia), territory or possession of the United States and any foreign country.

(2) For purposes of this part, the export of goods or services from the United States and the import of goods or services into the United States are activities in United States commerce. In addition, the action of a domestic concern in specifically directing the activities of its controlled in fact foreign subsidiary, affiliate, or other per-

manent foreign establishment is an activity in United States commerce.

(3) Activities of a United States person located in the United States may be in United States commerce even if they are part of or ancillary to activities outside United States commerce. However, the fact that an ancillary activity is in United States commerce does not, in and of itself, mean that the underlying or related activity is in United States commerce.

(4) Hence, the action of a United States bank located in the United States in providing financing from the United States for a foreign transaction that is not in United States commerce is nonetheless itself in United States commerce. However, the fact that the financing is in United States commerce does not, in and of itself, make the underlying foreign transaction an activity in United States commerce, even if the underlying transaction involves a foreign company that is a "United States person" within the meaning of this part.

(5) Similarly, the action of a United States person located in the United States in providing financial, accounting, legal, transportation, or other ancillary services to its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment in connection with a foreign transaction is in United States commerce. But the provision of such ancillary services will not, in and of itself, bring the foreign transaction of such subsidiary, affiliate, or permanent foreign establishment into United States commerce.

ACTIVITIES OF CONTROLLED IN FACT FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS

(6) Any transaction between a controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern and a person located in the United States is an activity in United States commerce.

(7) Whether a transaction between such a foreign subsidiary, affiliate, or other permanent foreign establishment and a person located outside the United States is an activity in United States commerce is governed by the following rules.

ACTIVITIES IN UNITED STATES COMMERCE

(8) A transaction between a domestic concern's controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, involving goods or services (including information but not including ancillary services) acquired from a person in the United States is in United States commerce under any of the following circumstances:

(i) If the goods or services were acquired for the purpose of filling an order from a person outside the United States;

(ii) If the goods or services were acquired for incorporation into, refining into, reprocessing into, or manufacture of another product for the purpose of filling an order from a person outside the United States;

(iii) If the goods or services were acquired for the purpose of fulfilling or engaging in any other transaction with a person outside the United States; *or*

(iv) If the goods were acquired and are ultimately used, without substantial alteration or modification, in filling an order from, or fulfilling or engaging in any other transaction with, a person outside the United States (whether or not the goods were originally acquired for that purpose). If the goods are indistinguishable as to origin from similar foreign-origin goods with which they have been mingled in a stockpile or inventory, the subsequent transaction involving the goods is presumed to be in United States commerce unless, at the time of filling the order, the foreign-origin inventory on hand was sufficient to fill the order.

(9) For purposes of this section, goods or services are considered to be acquired for the purpose of filling an order from or engaging in any other transaction with a person outside the United States where:

(i) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment upon the receipt of an order from or on behalf of a customer with the intention that the goods or services are to go to the customer;

(ii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment to meet the needs of specified customers pursuant to understandings with those customers, although not for immediate delivery; *or*

(iii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment based on the anticipated needs of specified customers.

(10) If any non-ancillary part of a transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States is in United States commerce, the entire transaction is in United States commerce. For example, if such a foreign subsidiary is engaged in filling an order from a non-United States customer both with goods acquired from the United States and with goods acquired elsewhere, the entire transaction with that customer is in United States commerce.

Activities Outside United States Commerce

(11) A transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, not involving the purchase, sale, or transfer of goods or services (including information) to or from a person in the United States, is not an activity in United States commerce.

(12) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to goods acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; *and*

(ii) They were further manufactured, incorporated, into, refined into, or reprocessed into another product.

(13) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to services acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; or

(ii) They are ancillary to the transaction with the person outside the United States.

(14) For purposes of this section, services are "ancillary services" if they are provided to a controlled foreign subsidiary, affiliate, or other permanent foreign establishment primarily for its own use rather than for the use of a third person. These typically include financial, accounting, legal, transportation, and other services, whether provided by a domestic concern or an unrelated entity.

(15) Thus, the provision of project financing by a United States bank located in the United States to a controlled foreign subsidiary unrelated to the bank is an ancillary service which will not cause the underlying transaction to be in United States commerce. By contrast, where a domestic concern, on behalf of its controlled foreign subsidiary, gives a guaranty of performance to a foreign country customer, that is a service provided to the customer and, as such, brings that subsidiary's transaction with the customer into United States commerce. Similarly, architectural or engineering services provided by a domestic concern in connection with its controlled foreign subsidiary's construction project in a third country are services passed through to that subsidiary's customer and, as such, bring that subsidiary's foreign transaction into United States commerce.

General

(16) Regardless of whether the subsequent disposition of goods or services from the United States is in United States commerce, the original acquisition of goods or services from a person in the United States is an activity in United States commerce subject to this part. Thus, if a domestic concern's controlled foreign subsidiary engages in a prohibited refusal to do business in stocking its inventory with goods from the United States, that action is subject to this part whether

or not subsequent sales from that inventory are.

(17) In all the above, goods and services will be considered to have been acquired from a person in the United States whether they were acquired directly or indirectly through a third party, where the person acquiring the goods or services knows or expects, at the time he places the order, that they will be delivered from the United States.

LETTERS OF CREDIT

(18) Implementation of a letter of credit in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign concern, is an activity in United States commerce.

(19) Implementation of a letter of credit outside the United States by a United States person located outside the United States is in United States commerce where the letter of credit (a) specifies a United States address for the beneficiary, (b) calls for documents indicating shipment from the United States, *or* (c) calls for documents indicating that the goods are of United States origin.

(20) See § 769.2(f) on "Letters of Credit" to determine the circumstances in which paying, honoring, confirming, or otherwise implementing a letter of credit is covered by this part.

EXAMPLES OF ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE UNITED STATES

The following examples are intended to give guidance in determining the circumstances in which an activity is in the interstate or foreign commerce of the United States. They are illustrative, not comprehensive.

UNITED STATES PERSON LOCATED IN THE UNITED STATES

(i) U.S. company A exports goods from the United States to a foreign country.

A's activity is in U.S. commerce, because A is exporting goods from the United States.

(ii) U.S. company A imports goods into the United States from a foreign country.

A's activity is in U.S. commerce, because A is importing goods into the United States.

(iii) U.S. engineering company A supplies consulting services to its controlled foreign subsidiary, B.

A's activity is in U.S. commerce, because A is exporting services from the United States.

(iv) U.S. company A supplies consulting services to foreign company B. B is unrelated to A or any other U.S. person.

A's activity is in U.S. commerce even though B, a foreign-owned company located outside the United States, is not subject to this part, because A is exporting services from the United States.

(v) Same as (iv), except A is a bank located in the United States and provides a construction loan to B.

A's activity is in U.S. commerce even though B is not subject to this part, because A is exporting financial services from the United States.

(vi) U.S. company A issues policy directives from time to time to its controlled foreign subsidiary, B, governing the conduct of B's activities with boycotting countries.

A's activity in directing the activities of its foreign subsidiary, B, is an activity in U.S. commerce.

FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS OF DOMESTIC CONCERNS

(i) A, a controlled foreign subsidiary of U.S. company B, purchases goods from the United States.

A's purchase of goods from the United States is in U.S. commerce, because A is importing goods from the United States. Whether A's subsequent disposition of these goods is in U.S. commerce is irrelevant. Similarly, the fact that A purchased goods from the United States does not, in and of itself, make any subsequent disposition of those goods an activity in U.S. commerce.

(ii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y.

(iii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for some of the materials, and with U.S. company C, an unrelated company, for the rest of the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y. It makes no difference whether the materials are ordered from B or C.

(iv) A, a controlled foreign subsidiary of U.S. company B, is in the wholesale and retail appliance sales business. A purchases finished air conditioning units from the United States from time to time in order to stock its inventory. A's inventory is also stocked with air conditioning units purchased outside the United States. A receives an order for air conditioning units from Y, a boycotting country. The order is filled with U.S.-origin units in A's inventory.

A's transaction with Y is in U.S. commerce, because its U.S.-origin goods are resold without substantial alteration.

(v) Same as (iv), except that A is in the chemicals distribution business. Its U.S.-origin goods are mingled in inventory with foreign-origin goods.

A's sale to Y of unaltered goods from its general inventory is presumed to be in U.S. commerce unless A can show that at the time of the sale the foreign-origin inventory on hand was sufficient to cover the shipment to Y.

(vi) A, a foreign subsidiary of U.S. company B, receives an order from boycotting ountry Y for computers. A places an order with U.S. company B for some of the com- onents; with U.S. company C, an unrelated ompany, for other components; and with oreign company D for the rest of the com- onents. A then assembles the computers nd ships them to Y.

A's transaction with Y is an activity in S. commerce, because some of the compo- nts are acquired from the United States r purposes of filling an order from Y.

(vii) Same as (vi), except A purchases all e components from non-U.S. sources.

A's transaction with Y is not an acitivity U.S. commerce, because it involves no port of goods from the United States. It kes no difference whether the technolo- A uses to manufacture computers was ginally acquired from its U.S. parent.

(viii) A, a controlled foreign subsidiary of . company B, manufactures computers. tocks its general components and parts entory with purchases made at times n the United States and at times from eign sources. A receives an order from Y, oycotting country, for computers. A fills t order by manufacturing the computers g materials from its general inventory.

s transaction with Y is not in U.S. com- ce, because the U.S.-origin components not acquired for the purpose of meeting anticipated needs of specified customers . It is irrelevant that A's operations may ased on U.S.-origin technology.

) Same as (viii), except that in anticipa- of the order from Y, A orders and re- s the necessary materials from the ed States.

transaction with Y is in U.S. com- e, because the U.S.-origin goods were ired for the purpose of filling an antici- l order from Y.

A, a controlled foreign subsidiary of company B, manufactures typewriters. It buys typewriter components both from the United States and from foreign sources. A sells its output in various places throughout the world, including boycotting country Y. Its sales to Y vary from year to year, but have averaged approximately 20 percent of sales for the past five years. A expects that its sales to Y will remain at approximately that level in the years ahead although it has no contracts or orders from Y on hand.

A's sales of typewriters to Y are not in U.S. commerce, because the U.S. components are not acquired for the purpose of filling an order from Y. A general expectancy of future sales is not an "order" within the meaning of this section.

(xi) U.S. company A's corporate counsel provides legal advice to B, its controlled foreign subsidiary, on the applicability of this part to B's transactions.

While provision of this legal advice is itself an activity in U.S. commerce, it does not, in and of itself, bring B's activities into U.S. commerce.

(xii) A, a controlled foreign subsidiary of U.S. company B, is in the general construction business. A enters into a contract with boycotting country Y to construct a power plant in Y. In preparing engineering drawings and specifications, A uses the advice and assistance of B.

A's transaction with Y is in U.S. commerce, because B's services are used for purposes of fulfilling the contract with Y. B's services are not ancillary services, because the engineering services in connection with construction of the power plant are part of the services ultimately provided to Y by A.

(xiii) Same as (xii), except that A gets no engineering advice or assistance from B. However, B's corporate counsel provides legal advice to A regarding the structure of the transaction. In addition, B's corporate counsel draws up the contract documents.

A's transaction with Y is not in U.S. commerce. The legal services provided to A are ancillary services, because they are not part of the services provided to Y by A in fulfillment of its contract with Y.

(xiv) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to construct an apartment complex in boycotting country Y. A will fulfill its contract completely with goods and services from outside the United States. Pursuant to a provision in the contract, B guarantees A's performance of the contract.

A's transaction with Y is in U.S. commerce, because B's guaranty of A's performance involves the acquisition of services from the United States for purposes of fulfilling the transaction with Y, and those services are part of the services ultimately provided to Y.

(xv) Same as (xiv), except that the guaranty of A's performance is supplied by C, a non-U.S. person located outside the United States. However, unrelated to any particular transaction, B from time to time provides general financial, legal, and technical services to A.

A's transaction with Y is not in U.S. commerce, because the services acquired from the United States are not acquired for purposes of fulfilling the contract with Y.

(xvi) A, a foreign subsidiary of U.S. company B, has a contract with boycotting country Y to conduct oil drilling operations in that country. In conducting these operations, A from time to time seeks certain technical advice from B regarding the operation of the drilling rigs.

A's contract with Y is in U.S. commerce, because B's services are sought for purposes of fulfilling the contract with Y and are part of the services ultimately provided to Y.

(xvii) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to sell typewriters to boycotting country Y. A is located in non-boycotting country P. None of the components are acquired from the United States. A engages C, a U.S. shipping company, to transport the typewriters from P to Y.

A's sales to Y are not in U.S. commerce, because in carrying A's goods, C is providing an ancillary service to A and not a service to Y.

(xviii) Same as (xvii), except that A's contract with Y calls for title to pass to Y in P. In addition, the contract calls for A to engage a carrier to make delivery to Y.

A's sales to Y are in U.S. commerce, because in carrying Y's goods, C is providing a service to A which is ultimately provided to Y.

(xix) A, a controlled foreign subsidiary of U.S. company B, has general product liability insurance with U.S. company C. Foreign-origin goods sold from time to time by A to boycotting country Y are covered by the insurance policy.

A's sales to Y are not in U.S. commerce, because the insurance provided by C is an ancillary service provided to A which is not ultimately provided to Y.

(xx) A, a controlled foreign subsidiary of U.S. company B, manufactures automobiles abroad under a license agreement with B. From time to time, A sells such goods to boycotting country Y.

A's sales to Y are not in U.S. commerce, because the rights conveyed by the license are not acquired for the specific purpose of engaging in transactions with Y.

(e) *"Intent".* (1) Part 769 prohibits a United States person from taking or knowingly agreeing to take certain specified actions with intent to comply with, further, or support an unsanctioned foreign boycott.

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision whether to take a particular prohibited action. So long as that is at least one of the reasons for his action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

(3) Intent is a necessary element of any violation of this part. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further, or support an unsanctioned foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation of this part.

(4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular prohibited action was taken must be established.

(5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information the furnishing of which is prohibited by this part, and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. Information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes. On the other hand, if a person refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

(6) Actions will be deemed to be taken with intent to comply with an

unsanctioned foreign boycott if the
person taking such action knew that
such action was required or requested
for boycott reasons. On the other
hand, the mere absence of a business
relationship with a blacklisted person
r with or in a boycotted country does
ot indicate the existence of the requi-
ite intent.

(7) In seeking to determine whether
he requisite intent exists, all available
vidence will be examined.

EXAMPLES OF "INTENT"

The following examples are intended to il-
strate the factors which will be considered
determining whether the required intent
ists. They are illustrative, not comprehen-
e.

i) U.S. person A does business in boycott-
country Y. In selecting firms to supply
ds for shipment to Y, A chooses supplier
because B's products are less expensive
of higher quality than the comparable
ducts of supplier C. A knows that C is
cklisted, but that is not a reason for A's
ction of B.

's choice of B rather than C is not action
intent to comply with Y's boycott, be-
e C's blacklist status is not a reason for
action.

) Same as (i), except that A chooses B
er than C in part because C is blacklist-
y Y.

nce C's blacklist status is a reason for
choice, A's action is taken with intent to
ply with Y's boycott.

) U.S. person A bids on a tender issued
oycotting country Y. A inadvertently
to notice a prohibited certification
h appears in the tender document. A's
accepted.

action in bidding was not taken with
t to comply with Y's boycott, because
oycott was not a reason for A's action.
U.S. bank A engages in letter of credit
actions, in favor of U.S. beneficiaries,
ving the shipment of U.S. goods to boy-
g country Y. As A knows, such letters
edit routinely contain conditions re-
g prohibited certifications. A fails to
easonable steps to prevent the imple-
ation of such letters of credit. A re-
for implementation a letter of credit
in fact contains a prohibited condi-
out does not examine the letter of
to determine whether it contains such
ition.

ough Y's boycott may not be a specif-
on for A's action in implementing the
of credit with a prohibited condition,
ilable evidence shows that A's action
ken with intent to comply with the
t, because A knows or should know that its procedures result in compliance with the boycott.

(v) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipment of U.S. goods to boycotting country Y. As A knows, the documentation accompanying such letters of credit sometimes contains prohibited certifications. In accordance with standard banking practices applicable to A, it does not examine such accompanying documentation. A receives a letter of credit in favor of a U.S. beneficiary. The letter of credit itself contains no prohibited conditions. However, the accompanying documentation, which A does not examine, does contain such a condition.

All available evidence shows that A's action in implementing the letter of credit was not taken with intent to comply with the boycott, because A has no affirmative obligation to go beyond applicable standard banking practices in implementing letters of credit.

(vi) A, a U.S. company, is considering opening a manufacturing facility in boycotted country X. A already has such a facility in boycotting country Y. After exploring the possibilities in X, A concludes that the market does not justify the move. A is aware that if it did open a plant in X, Y might object because of Y's boycott of X. However Y's possible objection is not a reason for A's decision not to open a plant in X.

A's decision not to proceed with the plant in X is not action with intent to comply with Y's boycott, because Y's boycott of X is not a reason for A's decision.

(vii) Same as (vi), except that after exploring the business possibilities in X, A concludes that the market does justify the move to X. However, A does not open the plant because of Y's possible objections due to Y's boycott of X.

A's decision not to proceed with the plant in X is action taken with intent to comply with Y's boycott, because Y's boycott is a reason for A's decision.

(viii) A, a U.S. chemical manufacturer, receives a "boycott questionnaire" from boycotting country Y asking, among other things, whether A has any plants located in boycotted country X. A, which has never supported Y's boycott of X, responds to Y's questionnaire, indicating affirmatively that it does have plants in X and that it intends to continue to have plants in X.

A's responding to Y's questionnaire is deemed to be action with intent to comply with Y's boycott, because A knows that the questionnaire is boycott-related. It is irrelevant that A does not also wish to support Y's boycott.

(ix) U.S. company A is on boycotting country Y's blacklist. In an attempt to secure its removal from the blacklist, A wishes to supply to Y information which demonstrates that A does at least as much business in Y and other countries engaged in a boycott of X as it does in X. A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may furnish the information, because in doing so it has no intent to comply with, further, or support Y's boycott.

(x) U.S. company A has a manufacturing facility in boycotted country X. A receives an invitation to bid on a construction project in boycotting country Y. The invitation states that all bidders must complete a boycott questionnaire and send it in with the bid. The questionnaire asks for information about A's business relationships with X. Regardless of whether A's bid is successful, A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion its activities in X without regard to Y's bo cott.

A may not answer the questionnaire, b cause, despite A's intentions with regard its business operations in X, Y's request completion of the questionnaire is for b cott purposes and by responding, A's acti would be taken with intent to comply w Y's boycott.

NOTE: Example (ix) is distinguishab from (x), because in (ix) A is not respondi to any boycott request or requirement. I stead, on its own initiative, it is supplyi information to demonstrate non-discrimin tory conduct as between X and Y witho any intent to comply with, further, or su port Y's boycott.

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§ 769.2 Prohibitions.

(a) Refusals to do business.

PROHIBITION AGAINST REFUSALS TO DO BUSINESS

(1) No United States person may:	to do business	when such refusal is pursuant to
refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse,	with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person,	an agreement with the boycotting country, a requirement of the boycotting country, or a request from or on behalf of the boycotting country.

(2) Generally, a refusal to do business under this section consists of action that excludes a person or country from a transaction for boycott reasons. This includes a situation in which a United States person chooses or selects one person over another on a boycott basis or takes action to carry out another person's boycott-based selection when he knows or has reason to know that the other person's selection is boycott-based.

(3) Refusals to do business which are prohibited by this section include not only specific refusals, but also refusals implied by a course or pattern of conduct. There need not be a specific offer and refusal to constitute a refusal to do business; a refusal may occur when a United States person has a financial or commercial opportunity and declines for boycott reasons to consider or accept it.

(4) A United States person's use of either a boycott-based list of persons with whom he will not deal (a so-called "blacklist") or a boycott-based list of persons with whom he will deal (a so-called "whitelist") constitutes a refusal to do business.

(5) An agreement by a United States person to comply generally with the laws of the boycotting country with which it is doing business or an agreement that local laws of the boycotting country shall apply or govern is not, in and of itself, a refusal to do business. Nor, in and of itself, is use of a contractual clause explicitly requiring a person to assume the risk of loss of non-delivery of his products a refusal to do business with any person who will not or cannot comply with such a clause. (But see § 369.4 on "Evasion".)

(6) If, for boycott reasons, a United States general manager chooses one supplier over another, or enters into a contract with one supplier over another, or advises its client to do so, then the general manager's actions constitute a refusal to do business under this section. However, it is not a refusal to do business under this section for a United States person to provide management, procurement, or other pre-award services for another person so long as (i) the provision of such pre-award services is customary for that firm (or industry of which the firm is a part), without regard to the boycotting or non-boycotting character of the countries in which they are performed, and (ii) the United States person, in providing such services, does not act to exclude a person or country from the transaction for boycott reasons, or otherwise take actions that are boycott-based. For example, a United States person under contract to provide general management services in connection with a construction project in a boycotting country may compile lists of qualified bidders for the client if that service is a customary one and if persons who are qualified are not excluded from that list because they are blacklisted.

(7) With respect to post-award services, if a client makes a boycott-based selection, actions taken by the United States general manager or contractor to carry out the client's choice are themselves refusals to do business if the United States contractor knows or has reason to know that the client's choice was boycott-based. (It is irrelevant whether the United States con-

tractor also provided pre-award services.) Such actions include entering into a contract with the selected supplier, notifying the supplier of the client's choice, executing a contract on behalf of the client, arranging for inspection and shipment of the supplier's goods, or taking any other action to effect the client's choice. (But see § 769.3(c) on "Compliance with Unilateral Selection" as it may apply to post-award services.)

(8) An agreement is not a prerequisite to a violation of this section since the prohibition extends to actions taken pursuant not only to agreements but also to requirements of, and requests from or on behalf of, a boycotting country.

(9) Agreements under this section may be either express or implied by a course or pattern of conduct. There need not be a direct request from a boycotting country for action by a United States person to have been taken pursuant to an agreement with or requirement of a boycotting country.

(10) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with national(s) or resident(s) of the boycotted country, or with any other person does not indicate the existence of the required intent.

EXAMPLES OF REFUSALS AND AGREEMENTS TO REFUSE TO DO BUSINESS

The following examples are intended to give guidance in determining the circumstances in which, in a boycott situation, a refusal to do business or an agreement to refuse to do business is prohibited. They are illustrative, not comprehensive.

REFUSALS TO DO BUSINESS

(i) A, a U.S. manufacturer, receives an order for its products from boycotting country Y. To fill that order, A solicits bids from U.S. companies B and C, manufacturers of components used in A's products. A does not, however, solicit bids from U.S. companies D or E, which also manufacture such components, because it knows that D and E are restricted from doing business in Y and that their products are, therefore, not importable into that country.

Company A may not refuse to solicit bids from D and E for boycott reasons, because to do so would constitute a refusal to do business with those persons.

(ii) A, a U.S. exporter, uses company B, a U.S. insurer, to insure the shipment of its goods to all its overseas customers. For the first time, A receives an order for its products from boycotting country Y. Knowing that B is on the blacklist of Y, A arranges with company C, a non-blacklisted U.S. insurer, to insure the shipment of its goods to Y.

A's action constitutes a refusal to do business with B.

(iii) A, a U.S. exporter, purchases all its liability insurance from company B, a U.S. company that does business in boycotted country X. A wishes to expand its operations into country Y, the boycotting country. Before doing so, A decides to switch from insurer B to insurer C in anticipation of a request from Y that A sever its relations with B as a condition of doing business in Y.

A may not switch insurers for this reason because doing so would constitute a refusal to do business with B.

(iv) U.S. company A exports goods to boycotting country Y. In selecting vessels to transport the goods to Y, A chooses only from among carriers which call at ports in Y.

A's action is not a refusal to do business with carriers which do not call at ports in Y.

(v) A, a U.S. bank with a branch office in boycotting country Y, sends representatives to boycotted country X to discuss plans for opening a branch office in X. Upon learning of these discussions, an official of the local boycott office in Y advises A's local branch manager that if A opens an office in X it will no longer be allowed to do business in Y. As a result of this notification, A decides to abandon its plans to open a branch in X.

Bank A may not abandon its plans to open a branch in X as a result of Y's notification because doing so would constitute a refusal to do business in boycotted country X.

(vi) A, a U.S. company that manufactures office equipment, has been restricted from doing business in boycotting country Y because of its business dealings with boycotted country X. In an effort to have itself removed from Y's blacklist, A ceases its business in X.

A's action constitutes a refusal to do business in boycotted country X.

(vii) A, a U.S. computer company, does business in boycotting country Y. A decides to explore business opportunities in boycotted country X. After careful analysis of possible business opportunities in X, A decides, solely for business reasons, not to market its products in X.

A's decision not to proceed is not a refusal to do business, because it is not based on boycott considerations. A has no affirmative obligation to do business in X.

(viii) A, a U.S. oil company with operations in boycotting country Y, has regular- y purchased equipment from U.S. petroleum equipment suppliers B, C, and D, none of whom is on the blacklist of Y. Because of ts satisfactory relationship with B, C, and), A has not dealt with other suppliers, in- luding supplier E, who is blacklisted by Y.

A's failure affirmatively to seek or secure usiness with blacklisted supplier E is not a efusal to do business with E.

(ix) Same as (viii), except U.S. petroleum quipment supplier E, a company on boy- otting country Y's blacklist, offers to pply U.S. oil company A with goods com- arable to those provided by U.S. suppliers C, and D. A, because it has satisfactory, tablished relationships with suppliers B, and D, does not accept supplier E's offer.

A's refusal of supplier E's offer is not a re- sal to do business, because it is based lely on non-boycott considerations. A has affirmative obligation to do business th E.

x) A, a U.S. construction company, enters o a contract to build an office complex in ycotting country Y. A receives bids from and C, U.S. companies that are equally alified suppliers of electrical cable for the ject. A knows that B is blacklisted by Y that C is not. A accepts C's bid, in part ause C is as qualified as the other poten- supplier and in part because C is not cklisted.

's decision to select supplier C instead of cklisted supplier B is a refusal to do busi- , because the boycott was one of the ons for A's decision.

i) A, a U.S. general contractor, has been ined to construct a highway in boycott- country Y. A circulates an invitation to to U.S. manufacturers of road-building pment. One of the conditions listed in invitation to bid is that, in order for A btain prompt service, suppliers will be ired to maintain a supply of spare parts a service facility in Y. A includes this ition solely for commercial reasons un- ed to the boycott. Because of this con- n, however, those suppliers on Y's list do not bid since they would be le to satisfy the parts and services re- ments.

action is not a refusal to do business, se the contractual condition was in- d solely for legitimate business reasons vas not boycott-based.

) Company A, a U.S. oil company, pur- s drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they are blacklisted or not. (But see section 769.4 on "Evasion".)

(xiii) A, a U.S. engineering and construction company, contracts with a government agency in boycotting country Y to perform a variety of services in connection with the construction of a large industrial facility in Y. Pursuant to this contract, A analyzes the market of prospective suppliers, compiles a suggested bidders list, analyzes the bids received, and makes recommendations to the client. The client independently selects and awards the contract to supplier C for boycott reasons. All of A's services are performed without regard to Y's blacklist or any other boycott considerations, and are the type of services A provides clients in both boycotting and non-boycotting countries.

A's actions do not constitute a refusal to do business, because, in the provision of pre-award services, A has not excluded the other bidders and because A customarily provides such services to its clients.

(xiv) Same as (xiii), except that in compiling a list of prospective suppliers, A deletes suppliers he knows his client will refuse to select because they are blacklisted. A knows that including the names of blacklisted suppliers will neither enhance their chances of being selected nor provide his client with a useful service, the function for which he has been retained.

A's actions, which amount to furnishing a so-called "whitelist," constitute refusals to do business, because A's pre-award services have not been furnished without regard to boycott considerations.

(xv) A, a U.S. construction firm, provides its boycotting country client with a permissible list of prospective suppliers, B, C, D, and E. The client independently selects and awards the contract to C, for boycott reasons, and then requests A to advise C of his selection, negotiate the contract with C, arrange for the shipment, and inspect the goods upon arrival. A knows that C was chosen by the client for boycott reasons.

A's action in complying with his client's direction is a refusal to do business, because A's post-award actions carry out his client's boycott-based decision. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in § 369.3(c).)

(xvi) Same as (xv), except that A is building the project on a turnkey basis and will retain title until completion. The client instructs A to contract only with C.

A's action in contracting with C constitutes a refusal to do business, because it is action that excludes blacklisted persons from the transaction for boycott reasons. (NOTE: Whether A's action comes within the unilateral selection exception depends upon factors discussed in § 796.3(c).)

(xvii) A, a U.S. exporter of machine tools, receives an order for drill presses from boycotting country Y. The cover letter from Y's procurement official states that A was selected over other U.S. manufacturers in part because A is not on Y's blacklist.

A's action in filling this order is not a refusal to do business, because A has not excluded anyone from the transaction.

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list—B, C, and D—because they are the best qualified. None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

(xix) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B meets all other conditions of the letter of credit but refuses to certify as to his blacklist status. A refuses to pay B on the letter of credit solely because B refuses to certify as to his blacklist status.

A has refused to do business with another person pursuant to a boycott requirement or request.

(xx) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is not blacklisted. B seeks payment from A and meets all other conditions of the letter of credit but refuses or is unable to provide the certification from the steamship line about the vessel's blacklist status. A refuses to pay B on the letter of credit solely because B cannot or will not provide the certification.

A has required another person to refuse to do business pursuant to a boycott requirement or request by insisting that B obtain such a certificate. (Either A or B may request an amendment to the letter of credit substituting a certificate of vessel eligibility, however. See Example xxi below).

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B seeks payment from A and meets all other conditions of the letter of credit. A refuses to pay B solely because B cannot or will not provide the certification.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because the vessel eligibility certificate is a common requirement for non-boycott purposes.

(xxii) U.S. bank A confirms a letter of credit in favor of U.S. beneficiary B. The letter of credit contains a requirement that B certify that he is not blacklisted. B presents the letter of credit to U.S. bank C, a correspondent of bank A. B does not present the certificate of blacklist status to bank C but, in accordance with these rules, bank C pays B, and then presents the letter of credit and documentation to bank A for reimbursement. Bank A refuses to reimburse bank C because the blacklist certification of B is not included in the documentation.

A has required another person to refuse to do business with a person pursuant to a boycott requirement or request by insisting that C obtain the certificate from B.

(xxiii) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B fails to provide such a certification when he presents the documents to A for payment. A notifies B that the certification has not been submitted.

A has not refused to do business with another person pursuant to a boycott requirement by notifying B of the omitted certificate. A may not refuse to pay on the letter of credit, however, if B states that B will not provide such a certificate.

(xxiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B from the issuing bank for the purpose of confirmation, negotiation or payment. The letter of credit requires B to certify that he is not blacklisted. A notifies B that it is contrary to the policy of A to handle letters of credit containing this condition and that, unless an amendment is obtained deleting this condition, A will not implement the letter of credit.

A has not refused to do business with another person pursuant to a boycott requirement, because A has indicated its policy against implementing the letter of credit containing the term without regard to B's ability or willingness to furnish such a certificate.

AGREEMENTS TO REFUSE TO DO BUSINESS

(i) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a primary school. The proposed contract contains a clause stating that A "may not use goods or services in the project that are produced or provided by any person restricted from having a business relationship with country Y by reason of Y's boycott against country X".

A's action in entering into such a contract would constitute an agreement to refuse to do business, because it is an agreement to exclude blacklisted persons from the transaction. A may, however, renegotiate this clause so that it does not contain terms prohibited by this part.

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist, and A's bid makes no commitment regarding not dealing with certain companies. A's bid in response to the tender is accepted.

At the point when A's bid is accepted, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender are part of the contract between Y and A.

(iii) A, a U.S. construction firm, is offered a contract to perform engineering and construction services in connection with a project located in boycotting country Y. The contract contains a clause stating that, in the event of a contract dispute, the laws of Y will apply.

A may enter into the contract. Agreement hat the laws of boycotting country Y will ontrol in resolving a contract dispute is not n agreement to refuse to do business.

(iv) Same as (iii), except that the contract ontains a clause that A and its employees ill comply with the laws of boycotting ountry Y. A knows that Y has a number of oycott laws.

Such an agreement is not, in and of itself, n agreement to refuse to do business. If, owever, A subsequently refuses to do busi- ess with someone because of the laws of Y, 's action would be a refusal to do business.

(v) Same as (iv) except that the contract ntains a clause that A and its employees ll comply with the laws of boycotting untry Y, "including boycott laws".

A's agreeing, without qualification, to mply with local boycott laws constitutes agreement to refuse to do business.

(vi) Same as (v), except that A inserts a oviso "except insofar as Y's laws conflict th U.S. laws", or words to that effect.

Such an agreement is not an agreement to fuse to do business.

(vii) A, a U.S. general contractor, is retained to construct a pipeline in boycotting country Y. A provision in the proposed contract stipulates that in purchasing equipment, supplies, and services A must give preference to companies located in host country Y.

A may agree to this contract provision. Agreeing to a "buy local" contract provision is not an agreement to refuse to do business, because A's agreement is not made for boycott reasons.

(viii) A, a U.S. exporter planning to sell retail goods to customers in boycotting country Y, enters into a contract to purchase goods wholesale from B, a U.S. appliance manufacturer. A's contract with B includes a provision stipulating that B may not use components or services of blacklisted companies in the manufacture of its appliances.

A's contract constitutes a refusal to do business, because it would require another person, B to refuse to do business with other persons for boycott reasons. B may not agree to such a contract, because it would be agreeing to refuse to do business with other persons for boycott reasons.

(ix) Same as (viii), except that A and B reach an implicit understanding that B will not use components or services of blacklisted companies in the manufacture of goods to be exported to Y. In the manufacture of appliances to be sold to A for export to nonboycotting countries B uses components manufactured by blacklisted companies.

The actions of both A and B constitute agreement to refuse to do business. The agreement is implied by their pattern of conduct.

(x) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies that negotiation of the letter of credit with a bank that appears on the country X boycott blacklist is prohibited. U.S. bank A, C's correspondent bank, advises B of the letter of credit. B presents documentation to bank A seeking to be paid on the letter of credit, without amending or otherwise taking exception to the boycott condition.

B has agreed to refuse to do business with blacklisted banks because, by presenting the letter of credit for payment, B has accepted all of its terms and conditions.

(b) *Discriminatory actions.*

PROHIBITION AGAINST TAKING DISCRIMINATORY ACTIONS

(1) No United States person may: (i) Refuse to employ or otherwise discriminate against any individual who is a United States person on the basis

of race, religion, sex, or national origin;

(ii) Discriminate against any corporation or other organization which is a United States person on the basis of the race, religion, sex, or national origin of any owner, officer, director, or employee of such corporation or organization;

(iii) Knowingly agree to take any of the actions described in (i) and (ii) above; *or*

(iv) Require or knowingly agree to require any other person to take any of the actions described in (i) and (ii) above.

(2) This prohibition shall apply whether the discriminatory action is taken by a United States person on its own or in response to an agreement with, request from, or requirement of a boycotting country. This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

(3) The section does not supersede or limit the operation of the civil rights laws of the United States.

EXAMPLES OF DISCRIMINATORY ACTIONS

The following examples are intended to give guidance in determining the circumstances in which the taking of particular discriminatory actions is prohibited. They are illustrative, not comprehensive.

(i) U.S. construction company A is awarded a contract to build an office complex in boycotting country Y. A, believing that employees of a particular religion will not be permitted to work in Y because of Y's boycott against country X, excludes U.S. persons of that religion from consideration for employment on the project.

A's refusal to consider qualified U.S. persons of a particular religion for work on the project in Y constitutes a prohibited boycott-based discriminatory action against U.S. persons on the basis of religion.

(ii) Same as (i), except that a clause in the contract provides that "no persons of country X origin are to work on this project".

A's agreement constitutes a prohibited boycott-based agreement to discriminate against U.S. persons, among others, on the basis of national origin.

(iii) Same as (i), except that a clause in the contract provides that "no persons who are citizens, residents, or nationals of co try X are to work on this project".

A's agreement does not constitute a b cott-based agreement to discrimin against U.S. persons on the basis of race, ligion, sex, or national origin, because t clause requires exclusion on the basis of c zenship, residency, and nationality only.

(iv) U.S. construction company A ent into a contract to build a school in boyco ing county Y. Y's representative orally te A that no persons of country X origin are work on the project.

A may not comply, because to do so wou constitute discrimination on the basis of n tional origin. It makes no difference that learned of Y's requirement orally. It mak no difference how A learns about Y's d criminatory requirement.

(v) Boycotting country Y tenders an in tation to bid on a construction project in The tender requires that the successful bi der's personnel will be interviewed and th persons of a particular religious faith w not be permitted to work on the project. Y requirement is based on its boycott of cou try X, the majority of whose citizens are that particular faith.

Agreement to this provision in the tende document by a U.S. person would constitu a prohibited agreement to engage in boy cott-based discrimination against U.S. per sons of a particular religion.

(vi) Same as (v), except that the tende specifies that "women will not be allowed t work on this project".

Agreement to this provision in the tende by a U.S. person does not constitute a pro hibited agreement to engage in boycott-based discrimination, because the restrictio against employment of women is not boy cott-based. Such an agreement may, howev er, constitute a violation of U.S. civil rights laws.

(vii) A is a U.S. investment banking firm. As a condition of participating in an under writing of securities to be issued by boycott ing country Y, A is required to exclude in vestment banks owned by persons of a par ticular faith from participation in the un derwriting. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

A's agreement to such a provision consti tutes a prohibited agreement to engage in boycott-based discrimination against U.S. persons on the basis of religion. Further, if A requires others to agree to such a condi tion, A would be acting to require another person to engage in such discrimination.

(viii) U.S. company A is asked by boycott ing country Y to certify that A will not use a six-pointed star on the packaging of its products to be imported into Y. The re quirement is part of the enforcement effort by Y of its boycott against country X.

A may not so certify. The six-pointed star is a religious symbol, and the certification by A that it will not use such a symbol constitutes a statement that A will not ship products made or handled by persons of that religion.

(ix) Same as (viii), except that A is asked to certify that no symbol of boycotted country X will appear on the packaging of its products imported into Y.

Such a certification conveys no statement about any person's religion and, thus, does not come within this prohibition.

(c) *Furnishing information about race, religion, sex, or national origin.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(1) No United States person may: (i) Furnish information about the race, religion, sex, or national origin of any United States person;

(ii) Furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person;

(iii) Knowingly agree to furnish information about the race, religion, sex, or national origin of any United States person; or

(iv) Knowingly agree to furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person.

(2) This prohibition shall apply whether the information is specifically requested or is offered voluntarily by the United States person. It shall also apply whether the information requested or volunteered is stated in the affirmative or the negative.

(3) Information about the place of birth of or the nationality of the parents of a United States person comes within this prohibition, as does information in the form of code words or symbols which could identify a United States person's race, religion, sex, or national origin.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF THE PROHIBITION AGAINST FURNISHING DISCRIMINATORY INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of discriminatory information is prohibited. They are illustrative, not comprehensive.

(i) U.S. company A receives a boycott questionnaire from boycotting country Y asking whether it is owned or controlled by persons of a particular faith, whether it has any persons on its board of directors who are of that faith, and what the national origin of its president is. The information is sought for purposes of enforcing Y's boycott against country X, and A knows or has reason to know that the information is sought for that reason.

A may not answer the questionnaire, because A would be furnishing information about the religion and national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(ii) U.S. company A, located in the United States, is asked by boycotting country Y to certify that A has no persons of a particular national origin on its board of directors. A knows that Y's purpose in asking for the certification is to enforce its boycott against country X.

A may not make such a certification, because A would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iii) U.S. company A believes that boycotting country Y will select A's bid over those of other bidders if A volunteers that it has no shareholders, officers, or directors of a particular national origin. A's belief is based on its knowledge that Y generally refuses, as part of its boycott against country X, to do business with companies owned, controlled, or managed by persons of this particular national origin.

A may not volunteer this information, because it would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iv) U.S. company A has a contract to construct an airport in boycotting country Y. Before A begins work, A is asked by Y to identify the national origin of its employees who will work on the site. A knows or has reason to know that Y is seeking this information in order to enforce its boycott against X.

A may not furnish this information, because A would be providing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(v) Same as (iv), except that in order to assemble its work force on site in Y, A sends visa forms to its employees and asks that the forms be returned to A for tansmittal to Y's consulate or embassy. A, itself, furnishes no information about its employees, but merely transmits the visa forms back and forth.

In performing the ministerial function of transmitting visa forms, A is not furnishing information about any U.S. person's race, religion, sex, or national origin.

(vi) Same as (iv), except that A is asked by Y to certify that none of its employees in Y will be women, because Y's laws prohibit women from working.

Such a certification does not constitute a prohibited furnishing of information about any U.S. person's sex, since the reason the information is sought has nothing to do with Y's boycott of X.

(vii) U.S. company A is considering establishing an office in boycotting country Y. In order to register to do business in Y, A is asked to furnish information concerning the nationalities of its corporate officers and board of directors.

A may furnish the information about the nationalities of its officers and directors, because in so doing A would not be furnishing information about the race, religion, sex, or national origin of any U.S. person.

(d) *Furnishing information about business relationships with boycotted countries or blacklisted persons.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS

(1) No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships: (i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

(2) This prohibition shall apply:

(i) Whether the information pertains to a business relationship involving a sale, purchase, or supply transaction; legal or commercial representation; shipping or other transportation transaction; insurance; investment; or any other type of business transaction or relationship; and

(ii) Whether the information is directly or indirectly requested or is furnished on the initiative of the United States person.

(3) This prohibition does not apply to the furnishing of normal business information in a commercial context. Normal business information may relate to factors such as financial fitness, technical competence, or professional experience, and may be found in documents normally available to the public such as annual reports, disclosure statements concerning securities, catalogues, promotional brochures, and trade and business handbooks. Such information may also appear in specifications or statements of experience and qualifications.

(4) Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. However, no information about business relationships with blacklisted persons or boycotted countries, their residents or nationals, may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

(5) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES CONCERNING FURNISHING OF INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information is prohibited. They are illustrative, not comprehensive.

(i) U.S. contractor A is considering bidding for a contract to build a dam in boycotting country Y. The invitation to bid, which appears in a trade journal, specifies that each bidder must state that he does not have any offices in boycotted country X. A knows or has reason to know that the requirement is boycott-based.

A may not make this statement, because it constitutes information about A's business relationships with X.

(ii) U.S. contractor A is considering bidding for a contract to construct a school in boycotting country Y. Each bidder is required to submit copies of its annual report with its bid. Since A's annual report describes A's worldwide operations, including the countries in which it does business, it necessarily discloses whether A has business relations with boycotted country X. A has no reason to know that its report is being sought for boycott purposes.

A, in furnishing its annual report, is supplying ordinary business information in a commercial context.

(iii) Same as (ii), except that accompanying the invitation to bid is a questionnaire from country Y's boycott office asking each bidder to supply a copy of its annual report.

A may not furnish the annual report despite its public availability, because it would be furnishing information in response to a questionnaire from a boycott office.

(iv) U.S. company A is on boycotting country Y's blacklist. For reasons unrelated to the boycott, A terminates its business relationships with boycotted country X. In exploring other marketing areas, A determines that boycotting country Y offers great potential. A is requested to complete a questionnaire from a central boycott office which inquires about A's business relations with X.

A may not furnish the information, because it is information about A's business relationships with a boycotted country.

(v) U.S. exporter A is seeking to sell its products to boycotting country Y. A is informed by Y that, as a condition of sale, A must certify that it has no salesmen in boycotted country X. A knows or has reason to know that the condition is boycott-based.

A may not furnish the certification, because it is information about A's business relationships in a boycotted country.

(vi) U.S. engineering company A receives invitation to bid on the construction of a dam in boycotting country Y. As a condition the bid, A is asked to certify that it does not have any offices in boycotted country X. A is also asked to furnish plans for other dams it has designed.

A may not certify that it has no office in X, because this is information about its business relationships in a boycotted country. A may submit plans for other dams it has designed, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(vii) U.S. company A, in seeking to expand its exports to boycotting country Y, sends a sales representative to Y for a one week trip. During a meeting in Y with trade association representatives, A's representative desires to explain that neither A nor any companies with which A deals has any business relationship with boycotted country X. The purpose of supplying such information is to ensure that A does not get blacklisted.

A's representative may not volunteer this information even though A, for reasons unrelated to the boycott, does not deal with X, because A's representative would be volunteering information about A's business relationships with X for boycott reasons.

(viii) U.S. company A is asked by boycotting country Y to furnish information concerning its business relationships with boycotted country X. A, knowing that Y is seeking the information for boycott purposes, refuses to furnish the information asked for directly, but proposes to respond by supplying a copy of its annual report which lists the countries with which A is presently doing business. A does not happen to be doing business with X.

A may not respond to Y's request by supplying its annual report, because A knows that it would be responding to a boycott-based request for information about its business relationships with X.

(ix) U.S. company A receives a letter from a central boycott office asking A to "clarify" A's operations in boycotted country X. A intends to continue its operations in X, but fears that not responding to the request will result in its being placed on boycotting country Y's blacklist. A knows or has reason to know that the information is sought for boycott reasons.

A may not respond to this request, because the information concerns its business relationships with a boycotted country.

(x) U.S. company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.

A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationship with or in a boycotting country.

(xi) U.S. company A has a manufacturing plant in boycotted country X and is on boycotting country Y's blacklist. A is seeking to establish operations in Y, while expanding its operations in X. A applies to Y to be removed from Y's blacklist. A is asked, in response, to indicate whether it has manufacturing facilities in X.

A may not supply the requested information, because A would be furnishing information about its business relationships in a boycotted country.

(xii) U.S. bank A plans to open a branch office in boycotting country Y. In order to do so, A is required to furnish certain information about its business operations, including the location of its other branch offices. Such information is normally sought in other countries where A has opened a branch office, and A does not have reason to know that Y is seeking the information for boycott reasons.

A may furnish this information, even though in furnishing it A would disclose information about its business relationships in a boycotted country, because it is being furnished in a normal business context and A does not have reason to know that it is sought for boycott reasons.

(xiii) U.S. architectural firm A responds to an invitation to submit designs for an office complex in boycotting country Y. The invitation states that all bidders must include information concerning similar types of buildings they have designed. A has not designed such buildings in boycotted country X. Clients frequently seek information of this type before engaging an architect.

A may furnish this information, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(xiv) U.S. oil company A distributes to potential customers promotional brochures and catalogues which give background information on A's past projects. A does not have business dealings with boycotted country X. The brochures, which are identical to those which A uses throughout the world, list those countries in which A does or has done business. In soliciting potential customers in boycotting country Y, A desires to distribute copies of its brochures.

A may do so, because this is furnishing normal business information, in a commercial context, relating to professional experience.

(xv) U.S. company A is interested in doing business with boycotting country Y. A wants to ask Y's Ministry of Trade whether, and if so why, A is on Y's blacklist or is otherwise restricted for boycott reasons from doing business with Y.

A may take this limited inquiry, because it does not constitute furnishing information.

(xvi) U.S. company A is asked by boyc ing country Y to certify that it is not ow by subjects or nationals of boycotted co try X and that it is not resident in t cotted country X.

A may not furnish the certification, cause it is information about A's busines lationships with or in a boycotted coun or with nationals of a boycotted country.

(xvii) U.S. company A, a manufacturer certain patented products, desires to re ter its patents in boycotting country Y. receives a power of attorney form requi to register its patents. The form contain question regarding A's business relationships with or in boycotted country X. A h no business relationships with X and kno or has reason to know that the informati is sought for boycott reasons.

A may not answer the question, because would be furnishing information about business relationships with or in a boycott ed country.

(xviii) U.S. company A is asked by bo cotting country Y to certify that it is n the mother company, sister company, subsidiary, or branch of any blacklisted company, and that it is not in any way affiliate with any blacklisted company.

A may not furnish the certification, because it is information about whether A ha a business relationship with another perso who is known or believed to be restricte from having any business relationship wi or in a boycotting country.

(e) *Information concerning association with charitable and fraternal organizations.*

PROHIBITIONS AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE AND FRATERNAL ORGANIZATIONS

(1) No United States person may furnish or knowingly agree to furnish information about whether any perso is a member of, has made contributions to, or is otherwise associate with or involved in the activities o any charitable or fraternal organization which supports a boycotted country.

(2) This prohibition shall appl whether: (i) The information concern association with or involvement in an charitable or fraternal organizatio which:

(A) Has, as one of its stated purposes, the support of a boycotted country through financial contributions or other means; or

(B) Undertakes, as a major organizational activity, to offer financial or other support to a boycotted country;

(ii) The information is directly or indirectly requested or is furnished on the initiative of the United States person; or

(iii) The information requested or volunteered concerns membership in, financial contributions to, or any other type of association with or involvement in the activities of such charitable or fraternal organization.

(3) This prohibition does not prohibit the furnishing of normal business information in a commercial context as defined in paragraph (d) of this section.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE OR FRATERNAL ORGANIZATIONS

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information concerning associations with charitable or fraternal organizations is prohibited. They are illustrative, not comprehensive.

(i) U.S. engineering firm A receives an invitation to bid from boycotting country Y. The invitation includes a request to supply information concerning any association which A's officers have with charitable organization B, an organization which is known by A to contribute financial support to boycotted country X. A knows or has reason to know that the information is sought for boycott reasons.

A may not furnish the information.

(ii) U.S. construction company A, in an effort to establish business dealings with boycotting country Y, proposes to furnish information to Y showing that no members of its board of directors are in any way associated with charitable organizations which support boycotted country X. A's purpose is to avoid any possibility of its being blacklisted by Y.

A may not furnish the information, because A's purpose in doing so is boycott-based. It makes no difference that no specific request for the information has been made by Y.

(iii) A, a citizen of the United States, is applying for a teaching position in a school in boycotting country Y. In connection with his application, A furnishes a resume which happens to disclose his affiliation with charitable organizations. A does so completely without reference to Y's boycott and without knowledge of any boycott requirement of Y that pertains to A's application for employment.

The furnishing of a resume by A is not a boycott-related furnishing of information about his association with charitable organizations which support boycotted country X.

(f) *Letters of credit.*

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT CONTAINING PROHIBITED CONDITIONS OR REQUIREMENTS

(1) No United States person may pay, honor, confirm, or otherwise implement a letter of credit which contains a condition or requirement compliance with which is prohibited by this part, nor shall any United States person, as a result of the application of this section, be obligated to pay, honor or otherwise implement such a letter of credit.

(2) For purposes of this section, "implementing" a letter of credit includes:

(i) Issuing or opening a letter of credit at the request of a customer;

(ii) Honoring, by accepting as being a valid instrument of credit, any letter of credit;

(iii) Paying, under a letter of credit, a draft or other demand for payment by the beneficiary;

(iv) Confirming a letter of credit by agreeing to be responsible for payment to the beneficiary in response to a request by the issuer;

(v) Negotiating a letter of credit by voluntarily purchasing a draft from a beneficiary and presenting such draft for reimbursement to the issuer or the confirmer of the letter of credit; and

(vi) Taking any other action to implement a letter of credit.

(3) In the standard international letter of credit transaction facilitating payment for the export of goods from the United States, a bank in a foreign country may be requested by its customer to issue a revocable or irrevocable letter of credit in favor of the United States exporter. The customer usually requires, and the letter of credit provides, that the issuing (or a

confirming) bank will make payment to the beneficiary against the bank's receipt of the documentation specified in the letter of credit. Such documentation usually includes commercial and consular invoices, a bill of lading, and evidence of insurance, but it may also include other required certifications or documentary assurances such as the origin of the goods and information relating to the carrier or insurer of the shipment. Banks usually will not accept drafts for payment unless the documents submitted therewith comply with the terms and conditions of the letter of credit.

(4) A United States person is not prohibited under this section from advising a beneficiary of the existence of a letter of credit in his favor, or from taking ministerial actions to dispose of a letter of credit which it is prohibited from implementing.

(5) Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit. This section shall not otherwise relieve any person from any obligations or other liabilities he may incur under other laws or regulations, except as may be explicitly provided in this section.

LETTERS OF CREDIT TO WHICH THIS SECTION APPLIES

(6) This prohibition, like all others, applies only with respect to a United States person's activities taken with intent to comply with, further, or support an unsanctioned foreign boycott. In addition, it applies only when the transaction to which the letter of credit applies is in United States commerce and the beneficiary is a United States person.

IMPLEMENTATION OF LETTERS OF CREDIT IN THE UNITED STATES

(7) A letter of credit implemented in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign bank, will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(8) Where a letter of credit implemented in the United States by a United States person located in the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. This presumption may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person despite the foreign address.

IMPLEMENTATION OF LETTERS OF CREDIT OUTSIDE THE UNITED STATES

(9) A letter of credit implemented outside the United States by a United States person located outside the United States will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit (a) specifies a United States address for the beneficiary and (b) calls for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(10) Where a letter of credit implemented outside the United States by a United States person located outside the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. In addition, where such a letter of credit does not call for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin, the transaction to which it applies will be presumed to be outside United States commerce. The presumption that the beneficiary is other than a United States person may be

rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person. The presumption that the transaction to which the letter of credit applies is outside United States commerce may be rebutted by facts which could reasonably lead the bank to conclude that the underlying transaction is in United States commerce.

GRACE PERIOD

(11) If the underlying transaction to which the letter of credit relates is entitled to grace period treatment under this part, implementation of the letter of credit is also entitled to such grace period treatment. A letter of credit may be implemented at any time after he end of a grace period regarding he underlying transaction so long as ll the prohibited boycott certifica- ions have been given or other boy- ott-related acts carried out prior to he expiration of a grace period. Simi- rly, an implementing United States ank may complete implementation of letter of credit containing prohibited oycott terms after the effective date this part provided the beneficiary s complied with all such boycott rms prior to the effective date.

EXAMPLES OF THE PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

he following examples are intended to e guidance in determining the circum- nces in which this section applies to the plementation of a letter of credit and in ch such implementation is prohibited. ey are illustrative not comprehensive.

PLEMENTATION OF LETTERS OF CREDIT IN UNITED STATES COMMERCE

A, a U.S. bank located in the United es, opens a letter of credit in the United es in favor of B, a foreign company lo- d outside the United States. The letter edit specifies a non-U.S. address for the eficiary.

e beneficiary is presumed to be other a U.S. person, because it does not have S. address. The presumption may be re- ed by facts showing that A could rea- bly conclude that the beneficiary is a person despite the foreign address.

A, a branch of a foreign bank located e United States, opens a letter of credit vor of B, a foreign company located de the United States. The letter of t specifies a non-U.S. address for the ficiary.

The beneficiary is presumed to be other than a U.S. person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(iii) A, a U.S. bank branch located outside the United States, opens a letter of credit in favor of B, a person with a U.S. address. The letter of credit calls for documents indicating shipment of goods from the United States.

The letter of credit is presumed to apply to a transaction in U.S. commerce and to be in favor of a U.S. beneficiary because the letter of credit specifies a U.S. address for the beneficiary and calls for documents indicating that the goods will be shipped from the United States. These presumptions may be rebutted by facts showing that A could reasonably conclude that the beneficiary is not a U.S. person or that the underlying transaction is not in U.S. commerce.

(iv) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary, B, with an address outside the United States and calls for documents indicating that the goods are of U.S.-origin. A knows or has reason to know that although B has an address outside the United States, B is a U.S. person.

The letter of credit is presumed to apply to a transaction in U.S. commerce, because the letter of credit calls for shipment of U.S.-origin goods. In addition, the letter of credit is presumed to be in favor of a beneficiary who is a U.S. person, because A knows or has reason to know that the beneficiary is a U.S. person despite the foreign address.

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the U.S.

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

(i) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies as a condition of payment that B certify that it does not do business with boycotted country X. Foreign bank C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

(ii) Same as (i), except U.S. bank A desires to advise the beneficiary, U.S. company B, of the letter of credit.

A may do so, because advising the beneficiary of the letter of credit (including the term which prevents A from implementing it) is not implementation of the letter of credit.

(iii) Same as (i), except foreign bank C sends a telegram to U.S. bank A stating the major terms and conditions of the letter of credit. The telegram does not reflect the boycott provision. Subsequently, C mails to A documents setting forth the terms and conditions of the letter of credit, including the prohibited boycott condition.

A may not further implement the letter of credit after it receives the documents, because they reflect the prohibited boycott condition in the letter of credit. A may advise the beneficiary and C of the existence of the letter of credit (including the boycott term), and may perform any essentially ministerial acts necessary to dispose of the letter of credit.

(iv) Same as (iii), except that U.S. company B, based in part on information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited language is of no force or effect.

(v) Boycotting country Y requests a foreign bank in Y to open a letter of credit to effect payment for goods to be shipped by U.S. supplier B, the beneficiary of the letter of credit. The letter of credit contains prohibited boycott clauses. The foreign bank forwards a copy of the letter of credit to its branch office, A, in the United States.

A may advise the beneficiary but may not implement the letter of credit, because it contains prohibited boycott conditions.

(vi) On November 1, 1977, boycotting county Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may implement the letter of credit, but after June 21, 1978, may accept only a positive certificate of origin as satisfactory documentation. (See § 769.3(b) on "Import and Shipping Document Requirements".)

(vii) Same as (vi), except that U.S. company B has a contract with Y to supply a certain quantity of goods each month o two-year period. B's contract was ent into on May 15, 1977, and thus qualifie grace period treatment until Decembe 1978. Each month, Y causes a lette credit to be opened in favor of B in orde effect payment. Such letters of credit for negative certificates of origin.

A may accept negative certificates origin in fulfillment of the terms of letter of credit through December 31, 1 because the underlying contract is enti to a grace period through that date. (section 769.5 on "Grace Period".)

(viii) B is a foreign bank located out the United States. B maintains an acco with U.S. bank A, located in the Un States. A letter of credit issued by B in fa of a U.S. beneficiary provides that any ne tiating bank may obtain reimburseme from A by certifying that all the terms conditions of the letter of credit have be met and then drawing against B's accou B notifies A by cable of the issuance of letter of credit and the existence of rei bursement authorization; A does not recei a copy of the letter of credit.

A may reimburse any negotiating ban even when the underlying letter of cre contains a prohibited boycott condition, b cause A does not know or have reason know that the letter of credit contains prohibited boycott condition.

(ix) Same as (viii), except that foreig bank B forwards a copy of the letter o credit to U.S. bank A, which then becom aware of the prohibited boycott clause.

A may not thereafter reimburse a negoti ating bank or in any way further implemen the letter of credit, because it knows of th prohibited boycott condition.

(x) Boycotting country Y orders good from U.S. exporter B and requests a foreig bank in Y to open a letter of credit in fav of B to cover the cost. The letter of cred contains a prohibited boycott clause. Th foreign bank asks U.S. bank A to advise an confirm the letter of credit. Through ina vertence, A does not notice the prohibit clause and confirms the letter of credit. A thereafter notices the clause and then re fuses to honor B's draft against the letter o credit. B sues bank A for payment.

A has an absolute defense against the obli gation to make payment under this letter o credit.

(NOTE: This section does not alter an other obligations or liabilities of the partie under appropriate law.)

(xi) U.S. bank A has confirmed and is i the midst of implementing a letter of credi in favor of a U.S. beneficiary when the rule and regulations of this part are issued i final form and become effective. Upon e amination of this part, A determines tha the letter of credit contains a prohibit boycott clause calling for a negative certificate of origin.

A may accept a negative certificate of origin in fulfillment of the terms of the letter of credit until June 21, 1978, one year from the date of enactment of the Export Administration Amendments of 1977, because negative certificates of origin are not prohibited through that date.

(xii) Boycotting country Y orders goods from U.S. company B. A letter of credit which contains a prohibited boycott clause is opened in favor of B by a foreign bank in Y. The foreign bank asks U.S. bank A to advise and confirm the letter of credit, which it forwards to A.

A may advise B that it has received the letter of credit (including the boycott term), but may not confirm the letter of credit with the prohibited clause.

(xiii) Same as (xii), except U.S. bank A fails to tell B that it cannot process the letter of credit. B requests payment.

A may not pay. If the prohibited language is eliminated or nullified as the result of renegotiation, A may then pay or otherwise implement the revised letter of credit.

(xiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted.

A may implement such a letter of credit, but it may not insist that the certification be furnished, because by so insisting it would be refusing to do business with a blacklisted person in compliance with a boycott.

(xv) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A knows that Y customarily requires the seller of goods to certify that it has dealt with no blacklisted supplier. A, therefore, instructs B that is will not make payment under the letter of credit unless B makes such a certification.

A's action in requiring the certification from B constitutes action to require another person to refuse to do business with blacklisted persons.

(xvi) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A has actual knowledge that B has agreed to supply a certification to Y that it has not dealt with blacklisted firms, as a condition of receiving the letter of credit in its favor.

A may not implement the letter of credit, because it knows that an implicit condition of the credit is a condition with which B may not legally comply.

(xvii) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit includes the statement, "Do not negotiate with blacklisted banks". C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

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§ 769.3 Exceptions to prohibitions.

(a-1) *Import requirements of a boycotting country.*

COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in supplying goods or services to a boycotting country, or to a national or resident of a boycotting country, may comply or agree to comply with requirements of such boycotting country which prohibit the import of:

(i) Goods or services from the boycotted country;

(ii) Goods produced or services provided by any business concern organized under the laws of the boycotted country; or

(iii) Goods produced or services provided by nationals or residents of the boycotted country.

(2) A United States person may comply or agree to comply with such import requirements whether or not he has received a specific request to comply. By its terms, this exception applies only to transactions involving imports into a boycotting country. A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

(3) In taking action within the scope of this exception, a United States person is limited in the types of boycott-related information he can supply. (See § 769.2(d) on "Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons" and § 769.3(b) on "Import and Shipping Document Requirements".)

EXAMPLES OF COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its products. Country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A "may not include parts or components produced or manufactured in boycotted country X."

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. (NOTE: After June 21, 1978, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.)

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods would be refused entry into Y because of Y's boycott against X.

(iv) Same as (iii), except that A also rejects the low bid by B for work on a construction project in country M, a country not boycotted by Y.

This exception does not apply, because A's action is not taken in order to comply with Y's requirements prohibiting the import of products from boycotted country X.

(v) A, a U.S. management consulting firm, contracts to provide services to boycotting country Y. Y requests that A not employ residents or nationals of boycotted country X to provide those services.

A may agree, as a condition of the contract, not to have services furnished by nationals or residents of X, because importation of such services is prohibited by Y.

(vi) A, a U.S. company, is negotiating a contract to supply machine tools to boycotting country Y. Y insists that the contract contain a provision whereby A agrees that none of the machine tools will be produced by any business concern owned by nationals of boycotted country X, even if the business concern is organized under the laws of a non-boycotted country.

A may not agree to this provision, because it is a restriction on the import of goods produced by business concerns owned by nationals of a boycotted country even if the business concerns themselves are organized under the laws of a non-boycotted country.

(a-2) *Shipment of goods to a boycotting country.*

COMPLIANCE WITH REQUIREMENTS REGARDING THE SHIPMENT OF GOODS TO A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with requirements of that country which prohibit the shipment of goods:

(i) On a carrier of the boycotted country; or

(ii) By a route other than that prescribed by the boycotting country or the recipient of the shipment.

(2) A specific request that a United States person comply or agree to comply with requirements concerning the use of carriers of a boycotted country is not necessary if the United States person knows, or has reason to know, that the use of such carriers for shipping goods to the boycotting country is prohibited by requirements of the boycotting country. This exception applies whether a boycotting country or the purchaser of the shipment:

(i) Explicitly states that the shipment should not pass through a port of the boycotted country; or

(ii) Affirmatively describes a route of shipment that does not include a port in the boycotted country.

(3) For purposes of this exception the term "carrier of a boycotted country" means a carrier which flies the flag of a boycotted country or which is owned, chartered, leased, or operated by a boycotted country or by nationals or residents of a boycotted country.

EXAMPLES OF COMPLIANCE WITH THE SHIPPING REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with requi-ments regarding shipment of goods to a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A is a U.S. exporter from whom boycotting country Y is importing goods. Y directs that the goods not pass through a port of boycotted country X.

A may comply with Y's shipping instructions, because they pertain to the route of shipment of goods being shipped to Y.

(ii) A, a U.S. fertilizer manufacturer, receives an order from boycotting country Y for fertilizer. Y specifies in the order that A may not ship the fertilizer on a carrier of boycotted country X.

A may comply with this request, because it pertains to the carrier of a boycotted country.

(iii) B, a resident of boycotting country Y, orders textile goods from A, a U.S. distributor, specifying that the shipment must not be made on a carrier owned or leased by nationals of boycotted country X and that the carrier must not pass through a port of country X enroute to Y.

A may comply or agree to comply with these requests, because they pertain to the shipment of goods to Y on a carrier of a boycotted country and the route such shipment will take.

(iv) Boycotting country Y orders goods from A, a U.S. retail merchant. The order specifies that the goods shipped by A "may not be shipped on a carrier registered in or owned by boycotted country X."

A may agree to this contract provision, because it pertains to the carrier of a boycotted country.

(v) Boycotting country Y orders goods rom A, a U.S. pharmaceutical company, nd requests that the shipment not pass hrough a port of country P, which is not a ountry boycotted by Y.

This exception does not apply in a non-oycotting situation. A may comply with he shipping instructions of Y, because in oing so he would not violate any prohibiion of this part.

(b) *Import and shipping document equirements.*

OMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in shiping goods to a boycotting country, ay comply or agree to comply with mport and shipping document reuirements of that country, with reect to:

(i) The country of origin of the oods;

(ii) The name of the carrier;

(iii) The route of the shipment;

(iv) The name of the supplier of the shipment; and

(v) The name of the provider of other services.

(2) After June 21, 1978, all such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation. The purpose of this delayed effective date, which is provided by Section 4A(a)(2)(B) of the Export Administration Act of 1969, as amended, is to allow time for persons to adjust their practices to the use of import and shipping documentation stated in positive rather than negative terms.

EXAMPLES OF COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS

The following examples are intended to give guidance in determining the circumstances in which compliance with import and shipping document requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods being supplied did not originate in boycotted country X.

Until June 21, 1978, A may comply with such import requirements in the terms requested. After June 21, 1978, A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

(ii) Same as (i), except that Y requires that the shipping documentation accompanying the goods specify the country of origin of the goods.

A may furnish the information.

(iii) On February 1, 1978, A, a U.S. distributor, enters into a two-year contract with boycotting country Y to make monthly shipments of goods to Y. A clause in the contract requires that all shipments into the country must be accompanied by a certification that the goods did not originate in X, a country boycotted by Y.

A may supply such a negative certification until June 21, 1978. After that date, A may state the origin of the goods on the shipping or import documents in positive terms only.

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by "blacklisted" persons.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not "blacklisted".

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a "blacklisted" carrier.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not agree to supply a certification that the carrier is not "blacklisted" but may certify the name of the carrier in positive terms only.

(vii) Same as (vi), except that the contract requires certification that the goods will not be shipped on a carrier which flies the flag of, or is owned, chartered, leased, or operated by boycotted country X, or by nationals or residents of X.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(viii) Same as (vi), except that the contract requires that the shipping documents certify the name of the carrier being used.

A may, at any time, supply or agree to supply the requested documentation regarding the name of the carrier, either in negative or positive terms.

(ix) Same as (vi), except the contract requires a certification that the carrier will not call at a port in boycotted country X before making delivery in Y.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(x) Same as (vi), except that the contract requires that the shipping documents indicate the name of the insurer and freight forwarder.

A may comply at any time, because the statement is not required to be made in negative or blacklisting terms.

(xi) A, a U.S. exporter, is negotiating a contract to sell bicycles to boycotting country Y. Y insists that A agree to certify that the goods will not be shipped on a vessel which has ever called at a port in boycotted country X.

As distinguished from a certification that goods will not be shipped on a vessel which will call enroute a port of boycotted country X, such a certification is not a reasonable requirement to protect against war risks or confiscation, and hence, may not be supplied.

(xii) Same as (xi), except that Y insists that A agree to certify that the goods will not be shipped on a carrier that is ineligible to enter Y's waters.

Such a certification, which is not a reasonable requirement to protect against war risks or confiscation may not be supplied.

(xiii) A, a U.S. exporter, sells some of its products to boycotting country Y. A foreign bank located in Y opens a letter of credit to pay for the goods. The letter of credit requires that A supply documentation certifying that "the goods are not manufactured in boycotted country X."

A may make the required certification until June 21, 1978, because import and shipping document requirements of a boycotting country may be reflected in letters of credit.

(c) *Compliance with unilateral selection.*

COMPLIANCE WITH UNILATERAL AND SPECIFIC SELECTION

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by	of	provided that
a boycotting country, a national of a boycotting country, or a resident of a boycotting country, (including a United States person who is a bona fide resident of a boycotting country)	carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods,	with respect to services, it is necessary and customary that a not insignificant part of the services be performed within the boycotting country, and with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance; or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) This exception pertains to what is permissible for a United States person who is the recipient of a unilateral and specific selection of goods or services to be furnished by a third person. It does not pertain to whether the act of making such a selection is permitted; that question is covered, with respect to United States persons, in § 769.3(f) on "Compliance with Local Law". Nor does it pertain to the United States person who is the recipient of an order to supply its own goods or services. Nothing in this part prohibits or restricts a United States person from filling an order himself, even if he is selected by the buyer on a boycott basis (*e.g.*, because he is not blacklisted), so long as he does not himself take any action prohibited by this part.

UNILATERAL AND SPECIFIC CHARACTER OF THE SELECTION

(3) In order for this exception to apply, the selection with which a United States person wishes to comply must be unilateral and specific.

(4) A "specific" selection is one which is stated in the affirmative and which specifies a particular supplier of goods or services.

(5) A "unilateral" selection is one in hich the discretion in making the se- ection is exercised by the boycotting ountry buyer. If the United States erson who receives a unilateral selec- on has provided the buyer with any oycott-based assistance (including in- rmation for purposes of helping the uyer select someone on a boycott asis), then the buyer's selection is not unilateral, and compliance with that selection by a United States person does not come within this exception.

(6) The provision of so-called "pre-selection" or "pre-award" services, such as providing lists of qualified suppliers, subcontractors, or bidders, does not, in and of itself, destroy the unilateral character of a selection, provided such services are not boycott-based. Lists of qualified suppliers, for example, must not exclude anyone because he is blacklisted. Moreover, such services must be of the type customarily provided in similar transactions by the firm (or industry of which the firm is a part) as measured by the practice in non-boycotting as well as boycotting countries. If such services are not customarily provided in similar transactions or such services are provided in such a way as to exclude blacklisted persons from participating in a transaction or diminish their opportunity for such participation, then the services may not be provided without destroying the unilateral character of any subsequent selection.

SELECTION TO BE MADE BY BOYCOTTING COUNTRY RESIDENT

(7) In order for this exception to be available, the unilateral and specific selection must have been made by a boycotting country, or by a national or resident of a boycotting country. Such a resident may be a United States person. For purposes of this exception, a United States person will be considered a resident of a boycotting country only if he is a bona fide resident. A

United States person may be a bona fide resident of a boycotting country even if such person's residency is temporary.

(8) Factors that will be considered in determining whether a United States person is a bona fide resident of a boycotting country include:

(i) Physical presence in the country;

(ii) Whether residence is needed for legitimate business reasons;

(iii) Continuity of the residency;

(iv) Intent to maintain the residency;

(v) Prior residence in the country;

(vi) Size and nature of presence in the country;

(vii) Whether the person is registered to do business or incorporated in the country;

(viii) Whether the person has a valid work visa; and

(ix) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

No one of these factors is dispositive. All the circumstances will be examined closely to ascertain whether there is, in fact, a bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

(9) The boycotting country resident must be the one actually making the selection. If a selection is made by a non-resident agent, parent, subsidiary, affiliate, home office or branch office of a boycotting country resident, it is not a selection by a resident within the meaning of this exception.

(10) A selection made solely by a bona fide resident and merely transmitted by another person to a United States person for execution is a selection by bona fide resident within the meaning of this exception.

DUTY OF INQUIRY

(11) If a United States person receives, from another person located in the United States, what may be a unilateral selection by a boycotting country customer, and knows or has reason to know that the selection is made for boycott reasons, he has a duty to inquire of the transmitting person to termine who actually made the se tion. If he knows or has reason know that the selection was made other than a boycotting country, c national or resident of boycott country, he may not comply. A cou or pattern of conduct which a Uni States person recognizes or should r ognize as consistent with boycott strictions will create a duty to inqui

(12) If the United States person do not know or have reason to know th the selection it receives is boyco based, its compliance with such a lection does not offend any prohi tion and this exception is not neede

SELECTION OF SERVICES

(13) This exception applies only compliance with selections of certa types of suppliers of services—carrier insurers, and suppliers of services be performed "within the boycottin country". Services to be performe wholly within the United States o wholly within any country other tha the boycotting country are not cov ered.

(14) For purposes of this part, services are to be performed "within the boycotting country" only if they are of a type which would customarily be performed by suppliers of those services within the country of the recipient of those services, and if the part of the services performed within the boycotting country is a necessary and not insignificant part of the total services performed.

(15) What is "customary and necessary" for these purposes depends on the usual practice of the supplier of the services (or the industry of which he is a part) as measured by the practice in non-boycotting as well as boycotting countries, except where such practices are instituted to accommodate this part.

SELECTION OF GOODS

(16) This exception applies only to compliance with selections of certain types of goods—goods that, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country. The definition of "specifically identifiable goods" is the same

under this section as it is in paragraph (f) of this section on "Compliance with Local Law".

(17) Goods "specifically identifiable" in the normal course of business are those items which at the time of their entry into a boycotting country are identifiable as to source or origin by (*a*) uniqueness of design or appearance; or (*b*) trademark, trade name, or other identification normally on the items themselves, including their packaging. Goods are "specifically identifiable" in the normal course of business if their source or origin is ascertainable by inspection of the items themselves, including their packaging, regardless of whether inspection takes place. Goods are not considered to be "specifically identifiable" in the normal course of business if a trademark, trade name, or other form of identification not normally present is added to the items themselves, including their packaging, to accommodate this part.

GENERAL

(18) If a unilateral selection meets the conditions described above, the United States person receiving the unilateral selection may comply or agree to comply, even if he knows or has reason to know that the selection was boycott-based. However, no United States person may comply or agree to comply with any unilateral selection if he knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin.

EXAMPLES OF COMPLIANCE WITH A UNILATERAL SELECTION

The following examples are intended to give guidance in determining what constitutes a unilateral selection and the circumstances in which compliance with such a selection is permissible. They are illustrative, not comprehensive.

SPECIFIC AND UNILATERAL SELECTION

(i) A, a U.S. manufacturer of road-grading equipment, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y. A knows or has reason to know that Y's selection of B is boycott-based.

A may comply with Y's request, or may agree to comply as a condition of the contract, because the selection is specific and unilateral.

(ii) A, a U.S. contractor building an industrial facility in boycotting country Y is asked by B, a resident of Y, to use C as the supplier of air conditioning equipment to be used in the facility. C is not blacklisted by country Y. A knows or has reason to know that B's request is boycott-based.

A may comply with B's request, or may agree to comply as a condition of the contract, because the selection of C is specific and unilateral.

(iii) A, a U.S. manufacturer of automotive equipment, is asked by boycotting country Y not to ship its goods to Y on U.S. carriers, B, C, or D. Carriers B, C, and D are blacklisted by boycotting country Y. A knows or has reason to know that Y's request is boycott-based.

A may not comply or agree to comply with Y's request, because no specific selection of any particular carrier has been made.

(iv) A, a U.S. exporter shipping goods ordered by boycotting country Y, is provided by Y with a list of eligible U.S. insurers from which A may choose in insuring the shipment of its goods. A knows or has reason to know that the list was compiled on a boycott basis.

A may not comply or agree to comply with Y's request that A choose from among the eligible insurers, because no specific selection of any particular insurer has been made.

(v) A, a U.S. aircraft manufacturer, is negotiating to sell aircraft to boycotting country Y. During the negotiations, Y asks A to identify the company which normally manufactures the engines for the aircraft. A responds that they are normally manufactured by U.S. engine manufacturer B. B is blacklisted by Y. In making the purchase, Y specifies that the engines for the aircraft should be supplied by U.S. engine manufacturer C.

A may comply or agree to comply with Y's selection of C, because Y's selection is unilateral and specific.

(vi) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a pipeline. Y requests A to suggest qualified engineering firms to be used on-site in the construction of the pipeline. It is customary for A , regardless of where it conducts its operations, to identify qualified engineering firms to its customers so that its customers may make their own selection of the firm to be engaged. Choice of engineering firm is customarily a prerogative of the customer. A provides a list of five engineering firms, B–F, excluding no firm because it may be blacklisted, and then confers with and gives it recommendations to Y. A recommends C, because C is the best qualified. Y then selects B, because C is blacklisted.

A may comply with Y's selection of B, because the boycott-based decision is made by Y and is unilateral and specific. Since A's pre-award services are of the kind customarily provided in these situations, and since they are provided without reference to the boycott, they do not destroy the unilateral character of Y's selection.

(vii) A, a U.S. aircraft manufacturer, has an order to supply a certain number of planes to boycotting country Y. In connection with the order, Y asks A to supply it with a list of qualified aircraft tire manufacturers so that Y can select the tires to be placed on the planes. This is a highly unusual request, since, in A's worldwide business operations, choice of tires is customarily made by the manufacturer, not the customer. Nonetheless, A supplies a list of tire manufacturers, B, C, D, and E. Y chooses tire manufacturer B because B is not blacklisted. Had A, as is customary, selected the tires, company C would have been chosen. C happens to be blacklisted, and A knows that C's blacklist status was the reason for Y's selection of B.

A's provision of a list of tire manufacturers for Y to choose from destroys the unilateral character of Y's selection, because such a pre-selection service is not customary in A's worldwide business operations.

(viii) A, a U.S. aircraft manufacturer, receives an order from U.S. company C, which is located in the United States, for the sale of aircraft to company D, a U.S. affiliate of C. D is a bona fide resident of boycotting country Y. C instructs A that "in order to avoid boycott problems," A must use engines that are manufactured by company B, a company that is not blacklisted by Y. Engines built by B are unique in design and also bear B's trade name.

Since a has reason to know that the selection is boycott-based, he must inquire of C whether the selection was in fact made by D. If C informs A that the selection was made by D, A may comply.

(ix) Same as (viii), except that C initially states that the designation was unilaterally and specifically made by D.

A may accept C's statement without further investigation and may comply with the selection, because C merely transmitted D's unilateral and specific selection.

(x) Same as (ix), except that C informs A that it, C, has selected B on behalf of or as an agent of its affiliated company resident in the boycotting country.

A may not comply with this selection, because the decision was not made by a resident of the boycotting country.

(xi) A, a U.S. management consulting firm, is advising boycotting country Y on the selection of a contracting firm to construct a plant for the manufacture of agricultural chemicals. As is customary in its business, A compiles a list of potential contractors on the basis of its evaluation of t capabilities of the respective candidates perform the job. A has knowledge that co pany B is blacklisted, but provides Y wi the names of companies B, C, D, and E, lis ing them in order of their qualifications. instructs A to negotiate with C.

A may comply with Y's instruction, b cause Y's selection is unilateral and specifi

(xii) A, a U.S. exporter, is asked by bo cotting country Y not to ship goods on carr ers B, C, or D, which are owned by nationa of and are registered in country P, a countr not boycotted by Y.

A may comply or agree to comply with Y request even though the selection is not sp cific, because A does not know or hav reason to know that the request is boycot based. (NOTE: In example (xii), A has vio lated no prohibition, because it does no know or have reason to know that Y's in struction is boycott-based. Therefore, could not act with the requisite intent t comply with the boycott.)

(xiii) A, a U.S. construction company, re ceives a contract to construct a hotel in boycotting country Y. As part of the contrac A is required to furnish Y with lists of qualified suppliers of various specifically identifiable items. A compiles lists of various qualified suppliers wholly without reference to the boycott, and thereafter Y instructs A to negotiate with, enter into contracts with, and arrange for delivery from each of the suppliers which Y designates. A knows that Y's choices are made on a boycott basis.

A may comply with Y's selections and carry out these post-award services for Y because Y's selections were unilateral and specific and A's pre-award services were provided without reference to Y's boycott.

EXAMPLES OF BOYCOTTING COUNTRY BUYER

(The factors in determining whether a United States person is a "bona fide resident" of a boycotting country are the same as in § 769.3(f) on "Compliance with Local Law." See also the examples in that section.)

(i) A, a U.S. exporter, is asked by B, a U.S. person who is a bona fide resident of boycotting country Y, to ship goods on U.S. carrier C. C is not blacklisted by Y, and A knows that B has chosen on a boycott basis in order to comply with Y's boycott laws.

A may comply or agree to comply with B's request, because B is a bona fide resident of Y.

(ii) A is a U.S. computer company whose subsidiary, B, is a bona fide resident of boycotting country Y. A receives an order from B for specific, identifiable products manufactured by company C in connection with a computer which B is installing in Y.

A may comply or agree to comply with B's unilateral and specific selection, so long as the discretion was in fact exercised by B, not A. (NOTE: Unilateral selection transactions involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iii) A, a U.S. engineering firm, has chief engineer B as its resident engineer on a dam construction site in boycotting country Y. B's presence at the site is necessary in order to ensure proper supervision of the project. In order to comply with local law, B selects equipment supplier C rather than D, who is blacklisted, and directs A to purchase certain specific equipment from C for use in the project.

A may comply with this unilateral selection, because the decision was made by a bona fide resident of Y. (As noted above, unilateral selections involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iv) B, a branch of U.S. bank A, is located in boycotting country Y. B is in need of office supplies and asks the home office in New York to make the necessary purchases. A contacts C, a U.S. company in the office supply business, and instructs C to purchase various items from certain specific companies and ship them directly to B. In order to avoid any difficulties for B with respect to Y's boycott laws, A is careful to specify only non-blacklisted companies or suppliers. C know that that was A's purpose.

C may not comply with A's instruction, because the selection of suppliers was not made by a resident of a boycotting country.

(v) Same as (iv), except that A has given standing instructions to B that whenever it needs office supplies, it should specify certain suppliers designated by A. To avoid running afoul of Y's boycott laws, A's designations consist exclusively of non-blacklisted firms. A receives an order from B with the suppliers designated in accordance with A's instructions.

A may not comply with B's selection, because the selection was not in fact made by a bona fide resident of the boycotting country, but by a person located in the United States.

EXAMPLES OF SUPPLIERS OF SERVICES

(i) A, a U.S. manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y.

A may comply or agree to comply with Y's request, because compliance with the unilateral and specific selection of carriers is expressly permitted under this exception.

(ii) A, a U.S. exporter shipping goods ordered by C, a national of boycotting country Y, is asked by C to insure the shipment through U.S. insurer B.

A may comply or agree to comply with C's request, because compliance with the unilateral and specific selection of an insurer is expressly permitted under this exception.

(iii) A, a U.S. construction company, is hired by C, an agency of the government of boycotting country Y, to build a power plant in Y. C specifies that A should subcontract the foundation work to U.S. contractor B. Part of the foundation design work will be done by B in the United States.

A may comply or agree to comply with Y's designation, because a necessary and not insignificant part of B's services are to be performed within the boycotting country, and such services are customarily performed onsite.

(iv) A, a U.S. contractor, is engaged by boycotting country Y to build a power plant. Y specifies that U.S. architectural firm B should be retained by A to design the plant. In order to design the plant, it is essential that B's personnel visit and become familiar with the site, although the bulk of the design and drawing work will be done in the United States.

A may comply or agree to comply with Y's unilateral and specific selection of architectural firm B, because a necessary and not insignificant part of B's services are to be performed within Y, and such on-site work is customarily involved in the provision of architectural services. The fact that the bulk of the actual work may be performed in the United States is irrelevant since the part to be performed within Y is necessary to B's effective performance.

(v) Same as (iv), except that Y specifies that the turbine for the power plant should be designed by U.S. engineer C. It is neither customary nor necessary for C to visit the site in order to do any of his work, but C has informed A that he would probably want to visit the site in Y if he were selected for the job.

A may not comply or agree to comply with Y's request, because, in the normal course of business, it is neither customary nor necessary for engineer C's services to be performed in Y.

(vi) A, a U.S. aircraft manufacturer, receives a contract from boycotting country Y to manufacture jet engines for Y's use. Y specifies that the engines should be designed by U.S. industrial engineering firm B.

A may not comply or agree to comply with Y's request, because, in the normal course of business, the services will not be performed in Y.

(vii) U.S. company A has a contract to supply specially designed road graders to boycotting country Y. Y has instructed A that is should engage engineering firm B in the design work rather than engineering firm C, which A normally uses, because C is blacklisted. When A contacts B, B informs A that one of B's personnel customarily visits the location in which any equipment B designs is used after it is in use, in order to determine how good a design job B has done. Such visits are necessary from B's point of view to provide a check on the quality of its work, and they are necessary from Y's point of view because they make it possible for Y to discuss possible design changes should deficiencies be detected.

A may not comply with Y's selection of B, because the services which B would perform in Y are an insignificant part of the total services to be performed by B.

EXAMPLES OF SPECIFICALLY IDENTIFIABLE GOODS

(The test of what constitutes "specifically identifiable goods" under this exception also applies to the term "specifically identifiable goods" as used in § 769.3(f) of "Compliance with Local Law.")

(i) A, a U.S. contractor, is constructing an apartment complex, on a turnkey basis, for boycotting country Y. Y instructs A to use only kitchen appliances manufactured by U.S. company B in completing the project. The appliances normally bear the manufacturer's name and trademark.

A may comply with Y's selection of B, because Y's unilateral and specific selection is of goods identifiable as to source or origin in the normal course of business at the time of their entry into Y.

(ii) Same as (i), except that Y directs A to use lumber manufactured only by U.S. company C. In the normal course of business, C neither stamps its name on the lumber nor identifies itself as the manufacturer on the packaging. In addition, normal export packaging does not identify the manufacturer.

A may not comply with Y's selection, because the goods selected are not identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iii) B, a U.S. contractor who is a bona fide resident of boycotting country Y, is engaged in building roads. B retains the services of A, a U.S. engineering firm, to assist it in procuring construction equipment. B directs A to purchase road graders only from manufacturer C because other road grader manufacturers which A might use are blacklisted. C's road graders normally bear C's insignia.

A may comply with B's selection of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iv) A, a U.S. company, manufactures computer-operated machine tools. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name imprinted on the equipment. There are five or six U.S. manufacturers of such computers which will function interchangeably to operate the m chine tools manufactured by A. B, a re dent of boycotting country Y, contracts t buy the machine tools manufactured by on the condition that A incorporate, as th computer drive, a computer manufacture by U.S. company C. B's designation of C i made to avoid boycott problems which coul be caused if computers manufactured b some other company were used.

A may comply with B's designation of C because the goods selected are identifiabl by source or origin in the normal course o business at the time of their entry into Y.

(v) A, a U.S. wholesaler of electronic equipment, receives an order from B, a U.S. manufacturer of radio equipment, who is a bona fide resident of boycotting country Y. B orders a variety of electrical components and specifies that all transistors must be purchased from company C, which is not blacklisted by Y. The transistors requested by B do not normally bear the name of the manufacturer; however, they are typically shipped in cartons, and C's name and logo appear on the cartons.

A may comply with B's selection, because the goods selected by B are identifiable as to source or origin in the normal course of business at the time of their entry into Y by virtue of the containers or packaging used.

(vi) A, a U.S. computer manufacturer, receives an order for a computer from B, a university in boycotting country Y. B specifies that certain integrated circuits incorporated in the computer must be supplied by U.S. electronics company C. These circuits are incorporated into the computer and are not visible without disassembling the computer.

A may not comply or agree to comply with B's specific selection of these components because they are not identifiable as to their source or origin in the normal course of business at the time of their entry into Y.

(vii) A, a U.S. clothing manufacturer, receives an order for shirts from B, a retailer resident in boycotting country Y. B specifies that the shirts are to be manufactured from cotton produced by U.S. farming cooperative C. Such shirts will not identify C or the source of the cotton.

A may not comply or agree to comply with B's designation, because the cotton is not identifiable as to source or origin in the normal course of business at the time of entry into Y.

(viii) A, a U.S. contractor, is retained by B, a construction firm located in and wholly-owned by boycotting country Y, to assist B in procuring construction materials. B directs A to purchase a range of materials, including hardware, tools, and trucks, all of which bear the name of the manufacturer stamped on the item. In addition, B directs A to purchase steel beams manufactured by

U.S. company C. The name of manufacturer C normally does not appear on the steel itself or on its export packaging.

A may comply with B's selection of the hardware, tools, and trucks, because they are identifiable as to source or origin in the normal course of business at the time of entry into Y. A may not comply with B's selection of steel beams, because the goods are not identifiable as to source or origin by trade name, trademark, uniqueness or packaging at the time of their entry into Y.

EXAMPLES OF DISCRIMINATION ON BASIS OF RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(i) A, a U.S. paper manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B. Y states that the reason for its choice of B is that, unlike U.S. vessel C, B is not owned by persons of a particular faith.

A may not comply or agree to comply with Y's request, because A has reason to know that the purpose of the selection is to effect religious discrimination against a United States person.

(d) *Shipment and transshipment of exports pursuant to a boycotting country's requirements.*

COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT AND TRANSSHIPMENT OF EXPORTS

(1) A United States person may comply or agree to comply with the export requirements of a boycotting country with respect to shipments or transshipments of exports to:

(i) A boycotted country;

(ii) Any business concern of a boycotted country;

(iii) Any business concern organized under the laws of a boycotted country; or

(iv) Any national or resident of a boycotted country.

(2) This exception permits compliance with restrictions which a boycotting country may place on direct exports to a boycotted country; on indirect exports to a boycotted country (i.e., those that pass via third parties); and on exports to residents, nationals, or business concerns of, or organized under the laws of, a boycotted country, including those located in third countries.

(3) This exception also permits compliance with restrictions which a boycotting country may place on the route of export shipments when the restrictions are reasonably related to preventing the export shipments from coming into contact with or under the jurisdiction of the boycotted country. This exception applies whether a boycotting country or the vendor of the shipment:

(i) Explicitly states that the shipment should not pass through the boycotted country en route to its final destination; or

(ii) Affirmatively describes a route of shipment that does not include the boycotted country.

(4) A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

EXAMPLES OF COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT OR TRANSSHIPMENT OF EXPORTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the export requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Country Y's export regulations require that products not be exported from Y to boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to X.

(ii) Same as (i), except that Y's export regulations require that goods not be exported from boycotting country Y to any business concern organized under the laws of boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to a business concern organized under the laws of X, even if such concern is located in a country not involved in Y's boycott of X.

(iii) B, the operator of a storage facility in country M, contracts with A, a U.S. carrier, for the shipment of certain goods manufactured in boycotting country Y. A's contract with B contains a provision stating that the goods to be transported may not be shipped or transshipped to boycotted country X. B informs A that this provision is a requirement of C, the manufacturer of the goods who is a resident of boycotting country Y. Country M is not boycotted by Y.

A may agree to and comply with this provision, because such a provision is required by the export regulations of boycotting country Y in order to prevent shipment of Y-origin goods to a country boycotted by Y.

(iv) A, a U.S. petroleum refiner located in the United States, purchases crude oil from boycotting country Y. A has a branch operation in boycotted country X. Y requires, as a condition of sale, that A agree not to ship or transship the crude oil or products refined in Y to A's branch in X.

A may agree to and comply with these requirements, because they are export requirements of Y designed to prevent Y-origin products from being shipped to a boycotted country.

(v) A, a U.S. company, has a petrochemical plant in boycotting country Y. As a condition of securing an export license from Y, A must agree that it will not ship or permit transshipment of any of its output from the plant in Y to any companies which Y lists as being owned by nationals of boycotted country X.

A may agree to this condition, because it is a restriction designed to prevent Y-origin products from being exported to a business concern of boycotted country X or to nationals of boycotted country X.

(vi) Same as (v), except that the condition imposed on A is that Y-origin goods may not be shipped or permitted to be transshipped to any companies which Y lists as being owned by persons whose national origin is X.

A may not agree to this condition, because it is a restriction designed to prevent Y-origin goods from being exported to persons of a particular national origin rather than to residents or nationals of a particular boycotted country.

(vii) A, U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Y requires, as a condition of sale, that A not ship the products to be exported from Y to or through boycotted country X.

A may agree to and comply with this requirement, because it is an export requirement of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(viii) Same as (vii), except that boycotting country Y's export regulations require that products to be exported from Y not pass through a port of boycotted country X.

A may agree to and comply with Y's regulations prohibiting Y-origin exports from passing through a port at boycotted country X, because they are export requirement of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(ix) Same as (vii), except that Y's export regulations require that A not transship the exported products "in or at" boycotted country X.

A may agree to and comply with Y's regulations with respect to the transshipment of goods in or at X, because they are export requirements of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(e) *Immigration, passport, visa, or employment requirements of a boycotting country.*

Compliance With Immigration, Passport, Visa, or Employment Requirements of a Boycotting Country

(1) A United States individual may comply or agree to comply with the immigration, passport, visa, or employment requirements of a boycotting country, and with requests for information from a boycotting country made to ascertain whether such individual meets requirements for employment within the boycotting country, provided that he furnishes information only about himself or a member of his family, and not about any other United States individual, including his employees, employers, or co-workers.

(2) For purposes of this section, a "United States individual" means a person who is a resident or national of the United States. "Family" means immediate family members, including parents, siblings, spouse, children, and other dependents living in the individual's home.

(3) A United States person may not funish information about its employees or executives, but may allow any individual to respond on his own to any request for information relating to immigration, passport, visa, or employment requirements. A United States person may also perform any ministerial acts to expedite processing of applications by individuals. These include informing employees of boycotting country visa requirements at an appropriate time; typing, translation, messenger and similar services and assisting in or arranging for the expeditious processing of applications. All such actions must be undertaken on a non-discriminatory basis.

(4) A United States person may proceed with a project in a boycotting country even if certain of its employees or other prospective participants in a transaction are denied entry for

boycott reasons. But no employees or other participants may be selected in advance in a manner designed to comply with a boycott.

EXAMPLES OF COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with immigration, passport, visa, or employment requirements is permissable. They are illustrative, not comprehensive.

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may transfer to the plant in Y. Country Y's immigration laws specify that anyone wishing to enter the country or obtain a visa to work in the country must supply information about his religion. This information is required for boycott purposes.

A may furnish such information, because it is required by Y's immigration laws.

(ii) Same as (i), except that A is asked to supply such information about other employees of B.

A may not supply this information, beause it is not information about himself or is family.

(iii) A, a U.S. building contractor, has been warded a construction contract to be perormed in boycotting country Y. Y's immiration laws require that individuals applyg for visas must indicate race, religion, nd place of birth. The information is ught for boycott purposes. To avoid reeated rejections of applications for work as by A's employees, A desires to furnish country Y a list of its prospective and rrent employees and required information out each so that Y can make an initial eening.

A may not furnish such a list, because A uld be furnishing information about the e, religion, and national origin of its emyees.

iv) Same as (iii), except that A selects for k on the project those of its current emyees whom it believes will be granted k visas from boycotting country Y.

may not make a selection from among employees in a manner designed to ply with the boycott-based visa requirets of Y, but must allow all eligible emees to apply for visas. A may later subute an employee who obtains the neces- visa for one who has had his applica- rejected.

Same as (iii), except that A selects emees for the project and then allows each loyee individually to apply for his own Two employees' applications are rejectnd A then substitutes two other employees who, in turn, submit their own visa applications.

A may take such action, because in so doing A is not acting in contravention of any prohibition of this part.

(vi) Same as (v), except that A arranges for the translation, typing and processing of its employees' applications, and transmits all the applications to the consulate of boycotting country Y.

A may take such ministerial actions, because in so doing A is not itself furnishing information with respect to race, religion, sex, or national origin, but is merely transmitting information funished by its individual employees.

(vii) A, a U.S. contractor, selects U.S. Subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the employee B has proposed as chief engineer of this project is rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this part.

(f) *Compliance with local law.* (1) This exception contains two parts. The first covers compliance with local law with respect to a United States person's activities exclusively within a foreign country; the second covers compliance with local import laws by United States persons resident in a foreign country. Under both parts of this exception, local laws are laws of the host country, whether derived from statutes, regulations, decrees, or other official sources having the effect of law in the host country. This exception is not available for compliance with presumed policies or understandings of policies unless those policies are reflected in official sources having the effect of law.

(2) Both parts of this exception apply only to United States persons resident in a foreign country. For purposes of this exception, a United States person will be considered to be a resident of a foreign country only if he is a bona fide resident. A United States person may be a bona fide resident of a foreign country even if such person's residency is temporary.

(3) Factors that will be considered in determining whether a United States

person is a bona fide resident of a foreign country include:

(i) Physical presence in the country;

(ii) Whether residence is needed for legitimate business reasons;

(iii) Continuity of the residency;

(iv) Intent to maintain the residency;

(v) Prior residence in the country;

(vi) Size and nature of presence in the country;

(vii) Whether the person is registered to do business or incorporated in the country;

(viii) Whether the person has a valid work visa; and

(ix) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

No one of these factors is dispositive. All the circumstances involved will be closely examined to ascertain whether there is, in fact, bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

EXAMPLES OF BONA FIDE RESIDENCY

The following examples are intended to give guidance in determining the circumstances in which a United States person may be a bona fide resident of a foreign country. For purposes of illustration, each example discusses only one or two factors, instead of all relevant factors. They are illustrative, not comprehensive.

(i) A, a U.S. radio manufacturer located in the United States, receives a tender to bid on a contract to supply radios for a hotel to be built in boycotting country Y. After examining the proposal, A sends a bid from its New York office to Y.

A is not a resident of Y, because it is not physically present in Y.

(ii) Same as (i), except that after receiving the tender, A sends its sales representative to Y. A does not usually have sales representatives in countries when it bids from the United States, and this particular person's presence in Y is not necessary to enable A to make the bid.

A is not a bona fide resident of Y, because it has no legitimate business reasons for having its sales representative resident in Y.

(iii) A, a U.S. bank, wishes to establish a branch office in boycotting country Y. In pursuit of that objective, A's personnel visit Y to make the necessary arrangements. A intends to establish a permanent office in Y after the necessary ar ments are made.

A's personnel in Y are not bona fid dents of Y, because A does not yet permanent business operation in Y.

(iv) Same as (iii), except A's personn required by Y's laws to furnish certai discriminatory boycott information in to establish a branch in Y.

In these limited circumstances, A's p nel may furnish the non-discriminatory cott information necessary to establish dency to the same extent a U.S. perso is a bona fide resident in that country If this information could not be furn in such limited circumstances, the exce would be available only to firms reside a boycotting country before the effe date of this part.

(v) A, a U.S. construction company ceives an invitation to build a power pla boycotting country Y. After receipt of invitation, A's personnel visit Y in ord survey the site and make necessary anal in preparation for submitting a bid. Th vitation requires that otherwise prohib boycott information be furnished with bid.

A's personnel in Y are not bona fide dents of Y, because A has no perma business operation in Y. Therefore, A's sonnel may not furnish the prohibited formation.

(vi) Same as (v), except that A is consi ing establishing an office in boycott country Y. A's personnel visit Y in order register A to do business in that country intends to establish ongoing construct operations in Y. A's personnel are requi by Y's laws to furnish certain non-discri natory boycott information in order to r ister A to do business or incorporate a su sidiary in Y.

In these limited circumstances, A's perso nel may furnish non-discriminatory boyco information necessary to establish residen to the same extent a U.S. person who is bona fide resident in that country could this information could not be furnished such limited circumstances, the exceptio would be available only to firms resident a boycotting country before the effectiv date of this part.

(vii) A, a subsidiary of U.S. oil company is located in boycotting country Y. A ha been engaged in oil explorations in Y for number of years.

A is a bona fide resident of Y, because its pre-existing continuous presence in Y for legitimate business reasons.

(viii) Same as (vii), except that A has ju been established in Y and has not yet begu operations.

A is a bona fide resident of Y, because it is present in Y for legitimate business reasons and it intends to reside continuously.

(ix) U.S. company A is a manufacturer of prefabricated homes. A builds a plant in boycotting country Y for purposes of assembling components made by A in the United States and shipped to Y.

A's personnel in Y are bona fide residents of Y, because A's plant in Y is established for legitimate business reasons, and it intends to reside continuously.

(x) U.S. company A has its principal place of business in the United States. A's sales agent visits boycotting country Y from time to time for purposes of soliciting orders.

A's sales agent is not a bona fide resident of Y, because such periodic visits to Y are insufficient to establish a bona fide residency.

(xi) A, a branch office of U.S. construction company B, is located in boycotting country Y. The branch office has been in existence for a number of years and has been performing various management services in connection with B's construction operations in Y.

A is a bona fide resident of Y, because of its longstanding presence in Y and its conduct of ongoing operations in Y.

(xii) U.S. construction company A has never done any business in boycotting country Y. It is awarded a contract to construct a hospital in Y, and preparatory to beginning construction, sends its personnel to Y to set up operations.

A's personnel are bona fide residents of Y, because they are present in Y for the purpose of carrying out A's legitimate business purposes; they intend to reside continuously; and residency is necessary to conduct their business.

(xiii) U.S. company A manufactures furniture. All its sales in foreign countries are conducted from its offices in the United States. From time to time A has considered opening sales offices abroad, but it has concluded that it is more efficient to conduct sales operations from the United States. Shortly after the effective date of this part, A sends a sales representative to boycotting country Y to open an office in and solicit orders from Y. It is more costly to conduct operations from that office than to sell directly from the United States, but A believes that if it establishes a residence in Y, it will be in a better position to avoid conflicts with U.S. law in its sales to Y.

A's sales representative is not a bona fide resident of Y, because the residency was established to avoid the application of this part and not for legitimate business reasons.

(xiv) Same as (xiii), except that it is in fact more efficient to have a sales office in Y. In fact, without a sales office in Y, A would find it difficult to explore business opportunities in Y. A is aware, however, that residency in Y would permit its sales representative to comply with Y's boycott laws.

A's sales representative is a bona fide resident of Y, because A has a legitimate business reason for establishing a sales office in Y.

(xv) U.S. company B is a computer manufacturer. B sells computers and related programming services tailored to the needs of individual clients. Because of the complex nature of the product, B must have sales representatives in any country where sales are made. B has a sales representative, A, in boycotting country Y. A spends two months of the year in Y, and the rest of the year in other countries. B has a permanent sales office from which A operates while in Y, and the sales office is stocked with brochures and other sales materials.

A is a bona fide resident of Y, because his presence in Y is necessary to carry out B's legitimate business purposes; B maintains a permanent office in Y; and B intends to continue doing business in Y in the future.

(xvi) A, a U.S. construction engineering company, is engaged by B, a U.S. general contracting company, to provide services in connection with B's contract to construct a hospital complex in boycotting country Y. In order to perform those services, A's engineers set up a temporary office in a trailer on the construction site in Y. A's work is expected to be completed within six months.

A's personnel in Y are bona fide residents of Y, because A's on-site office is necessary to the performance of its services for B, and because A's personnel are continuously there.

(xvii) A, a U.S. company, sends one of its representatives to boycotting country Y to explore new sales possibilities for its line of transistor radios. After spending several weeks in Y, A's representative rents a post office box in Y, to which all persons interested in A's products are directed to make inquiry.

A is not a bona fide resident of Y, because rental of a post office box is not a sufficient presence in Y to constitute residency.

(xviii) A, a U.S. computer company, has a patent and trademark registered in the United States. In order to obtain registration of its patent and trademark in boycotting country Y, A is required to furnish certain non-discriminatory boycott information.

A may not furnish the information, because A is not a bona fide resident of Y.

(f-1) ***Activities exclusively within a foreign country.*** **(1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may comply or agree to comply with the laws of that country**

with respect to his activities exclusively within that country. These activities include:

(i) Entering into contracts which provide that local law applies or governs, or that the parties will comply with such laws;

(ii) Employing residents of the host country;

(iii) Retaining local contractors to perform work within the host country;

(iv) Purchasing or selling goods or services from or to residents of the host country; and

(v) Furnishing information within the host country.

(2) Activities exclusively within the country do not include importing goods or services from outside the host country, and, therefore, this part of the exception does not apply to compliance with import laws in connection with importing goods or services.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL LAW WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with local law is permissible. They are illustrative, not comprehensive.

ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

(i) U.S. construction company A, a bona fide resident of boycotting country Y, has a contract to build a school complex in Y. Pursuant to Y's boycott laws, the contract requires A to refuse to purchase supplies from certain local merchants. While Y permits such merchants to operate within Y, their freedom of action in Y is constrained because of their relationship with boycotted country X.

A may enter into the contract, because dealings with local merchants are activities exclusively within Y.

(ii) A, a banking subsidiary of U.S. bank B, is a bona fide resident of boycotting country Y. From time to time, A purchases office supplies from the United States.

A's purchase of office supplies is not an activity exclusively within Y, because it involves the import of goods from abroad.

(iii) A, a branch of U.S. bank B, is a bona fide resident of boycotting country Y. Under Y's boycott laws, A is required to supply information about whether A has any dealings with boycotted country X. A compiles and furnishes the information within Y and does so of its own knowledge.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(iv) Same as (iii), except that A is required to supply information about B's dealings with X. From its own knowledge and without making any inquiry of B, A compiles and furnishes the information.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(v) Same as (iv), except that in making its responses, A asks B to compile some of the information.

A may not comply, because the gathering of the necessary information takes place partially outside Y.

(vi) U.S. company A has applied for a license to establish a permanent manufacturing facility in boycotting country Y. Under Y's boycott law, A must agree, as a condition of the license, that it will not sell any of its output to blacklisted foreign firms.

A may not comply, because the agreement would govern activities of A which are not exclusively within Y.

DISCRIMINATION AGAINST UNITED STATES PERSONS

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A manufactures air conditioners in its plant in Y. Under Y's boycott laws, A must agree not to hire nationals of boycotted country X.

A may agree to the restriction and may abide by it with respect to its recruitment of individuals within Y, because the recruitment of such individuals is an activity exclusively within Y. However, A cannot abide by this restriction with respect to its recruitment of individuals outside Y, because this is not an activity exclusively within Y.

(ii) Same as (i), except that pursuant to Y's boycott laws A must agree not to hire anyone who is of a designated religion.

A may not agree to this restriction, because the agreement calls for discrimination against U.S. persons on the basis of religion. It makes no difference whether the recruitment of the U.S. persons occurs within or without Y. (NOTE: The exception for compliance with local law does not apply to boycott-based refusals to employ U.S. persons on the basis of race, religion, sex, or national origin even if the activity is exclusively within the boycotting country.)

(f-2) *Compliance with local import law.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting cou try, may, in importing goods, materials or components into that country, comply or agree to comply with the import laws of that country, *Provided That:*

(i) The items are for his own use or for his use in performing contractual services within that country; and

(ii) In the normal course of business, the items are identifiable as to their source or origin at the time of their entry into the foreign country by (*a*) uniqueness of design or appearance; or (*b*) trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) The factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country are those set forth in paragraph (f) of this section. Bona fide residence of a United States company's subsidiary, affiliate, or other permanent establishment in a foreign country does not confer such residence on such United States company. Likewise, bona fide residence of a United States company's employee in a foreign country does not confer such residence on the entire company.

(3) A United States person who is a bona fide resident of a foreign country may take action under this exception through an agent outside the country, but the agent must act at the direction of the resident and not exercise his own discretion. Therefore, if a United States person resident in a boycotting ountry takes action to comply with a oycotting country's import law with espect to the importation of qualified oods, he may direct his agent in the United States on the action to be aken, but the United States agent imself may not exercise any discreon.

(4) For purposes of this exception, he test that governs whether goods or omponents of goods are specifically entifiable is identical to the test aplied in paragraph (c) of this section n "Compliance With Unilateral Selecon" to determine whether they are entifiable as to their source or origin the normal course of business.

(5) The availability of this exception r the import of goods depends on hether the goods are intended for e United States person's own use at the time they are imported. It does not depend upon who has title to the goods at the time of importation into a foreign country.

(6) Goods are for the United States person's own use (including the performance of contractual services within the foreign country) if:

(i) They are to be consumed by the United States person;

(ii) They are to remain in the United States person's possession and to be used by that person;

(iii) They are to be used by the United States person in performing contractual services for another;

(iv) They are to be further manufactured, incorporated into, refined into, or reprocessed into another product to be manufactured for another; or

(v) They are to be incorporated into, or permanently affixed as a functional part of, a project to be constructed for another.

(7) Goods acquired to fill an order for such goods from another are not for the United States person's own use. Goods procured for another are not for one's own use, even if the furnishing of procurement services is the business in which the United States person is customarily engaged. Nor are goods obtained for simple resale acquired for one's own use, even if the United States person is engaged in the retail business. Likewise, goods obtained for inclusion in a turnkey project are not for one's own use if they are not customarily incorporated into, or do not customarily become permanently affixed as a functional part of, the project.

(8) This part of the local law exception does not apply to the import of services, even when the United States person importing such services is a bona fide resident of a boycotting country and is importing them for his own use. In addition, this exception is available for a United States person who is a bona fide resident of a foreign country only when the individual or entity actually present within that country takes action through the exercise of his own discretion.

(9) Use of this exception will be monitored and continually reviewed to determine whether its continued availability is consistent with the national

interest. Its availability may be limited or withdrawn as appropriate. In reviewing the continued availability of this exception, the effect that the inability to comply with local import laws would have on the economic and other relations of the United States with boycotting countries will be considered.

(10) A United States person who is a bona fide resident of a foreign country may comply or agree to comply with the host country's import laws even if he knows or has reason to know that particular laws are boycott-related. However, no United States person may comply or agree to comply with any host country law which would require him to discriminate against any United States person on the basis of race, religion, sex, or national origin, or to supply information about any United States person's race, religion, sex, or national origin.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL IMPORT LAW

The following examples are intended to give guidance in determining the circumstances in which compliance with local import law is permissible. They are illustrative, not comprehensive.

COMPLIANCE BY A BONA FIDE RESIDENT

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y and is engaged in oil drilling operations in Y. In acquiring certain large, specifically identifiable products for carrying out its operations in Y, A chooses only from non-blacklisted firms because Y's import laws prohibit the importation of goods from blacklisted firms. However, with respect to smaller items, B makes the selection on behalf of A and sends them to A in Y.

A may choose from non-blacklisted firms, because it is a U.S. person who is a bona fide resident in Y. However, because B is not resident in Y, B cannot make boycott-based selections to conform with Y's import laws prohibiting the importation of goods from blacklisted firms.

(ii) Same as (i), except that after making its choices on the larger items, A directs B to carry out its instructions by entering into appropriate contracts and making necessary shipping arrangements.

B may carry out A's instructions provided that A, a bona fide resident of Y, has in fact made the choice and B is exercising no discretion, but is acting only as A's agent. (NOTE: Such transactions between related companies will be scrutinized carefully. A must in fact exercise the discretion and make the selections. If the discretion is exercised by B, B would be in violation of this part.)

(iii) U.S. construction company A has a contract to build a school in boycotting country Y. A's employees set up operations in Y for purposes of commencing construction. A's employees in Y advise A's headquarters in the United States that Y's import laws prohibit importation of goods manufactured by blacklisted firms. A's headquarters then issues invitations to bid only to non-blacklisted firms for certain specifically identifiable goods.

A's headquarters' choice of non-blacklisted suppliers is not a choice made by a U.S. person who is a bona fide resident of Y, because the discretion in issuing the bids was exercised in the United States, not in Y.

(iv) Same as (iii), except that A's employees in Y actually make the decision regarding to whom the bids should be issued.

The choices made by A's employees are choices made by U.S. persons who are bona fide residents of Y, because the discretion in choosing was exercised solely in Y. (NOTE: Choices purportedly made by employees of U.S. companies who are resident in boycotting countries will be carefully scrutinized to ensure that the discretion was exercised entirely in the boycotting country.)

SPECIFICALLY IDENTIFIABLE GOODS

The test and examples as to what constitutes specifically identifiable goods are identical to those applicable under § 769.3(c) on "Compliance With Unilateral Selection".

IMPORTS FOR U.S. PERSON'S OWN USE

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A plans to import computer operated machine tools to be installed in its automobile plant in boycotting country Y. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name. A orders the tools from U.S. supplier C and specifies that C must incorporate computers manufactured by D, a non-blacklisted company. A would have chosen computers manufactured by E, except that E is blacklisted, and Y's import laws prohibit the importation of goods manufactured by blacklisted firms.

A may refuse to purchase E's computers because A is importing the computers for its own use in its manufacturing operations in Y.

(ii) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. To meet the needs of its employees in Y, A imports certain specifically identifiable commissary items for sale, such as cosmetics and canteen items, such as candy. In selecting such items for importation into Y. A chooses items made only by non-blacklisted firms, because Y's import laws prohibit importation of goods from blacklisted firms.

A may import these items only from non-blacklisted firms, because the importation of goods for consumption by A's employees is an importation for A's own use.

(iii) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract to build a hospital complex for the Ministry of Health in Y. Under the contract, A will be general manager of the project with discretion to choose all subcontractors and suppliers. The complex is to be built on a turnkey basis, with A retaining title to the property and bearing all financial risk until the complex is conveyed to Y. In choosing specifically identifiable goods for import, such as central air conditioning units and plate glass, A excludes blacklisted suppliers in order to comply with Y's import laws. These goods are customarily incorporated into, or permanently affixed as a functional part of, the project.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because importation of goods by a general contractor to be incorporated into a construction project in Y is an importation of goods for A's own use.

(iv) Same as (iii), except that, in addition, in choosing U.S. architects and engineers to work on the project, A excludes blacklisted firms, because Y's import laws prohibit the use of services rendered by blacklisted persons.

A may not refuse to deal with blacklisted architectural or engineering firms, because this exception does not apply to the import of services. It is irrelevant that, at some stage, the architectural or engineering drawings or plans may be brought to the site in Y. This factor is insufficient to transform such services into "goods" for purposes of this exception.

(v) Same as (iii), except that the project is to be completed on a "cost plus" basis, with Y making progress payments to A at various stages of completion.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because the importation of goods by A to be incorporated in a project A is under contract to complete is an importation of goods for its own use. The terms of payment are irrelevant.

(vi) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract for the construction of an office building in Y on a turnkey basis. In choosing goods to be used or included in the office complex, A orders wallboard, office partitions, and lighting fixtures from non-blacklisted manufacturers. A likewise orders desks, office chairs, typewriters, and office supplies from non-blacklisted manufacturers.

Because they are customarily incorporated into or permanently affixed as a functional part of an office building, the wallboard, office partitions, and lighting fixtures are for A's own use, and A may select non-blacklisted suppliers of these goods in order to comply with Y's import laws. Because they are not customarily incorporated into or permanently affixed to the project, the desks, office chairs, typewriters, and office supplies are not for A's own use, and A may not make boycott-based selections of the suppliers of these goods.

(vii) A, a U.S. company engaged in the business of selling automobiles, is a bona fide resident of boycotting country Y. In ordering automobiles from time to time for purposes of stocking its inventory, A purchases from U.S. manufacturer B, but not U.S. manufacturer C, because C is blacklisted. Retail sales are subsequently made from this inventory.

A's import of automobiles from B is not an import for A's own use, because the importation of items for general inventory in a retail sales operation is not an importation for one's own use.

(viii) A, a U.S. company engaged in the manufacture of pharmaceutical products, is a bona fide resident of boycotting country Y. In importing chemicals for incorporation into the pharmaceutical products, A purchases from U.S. supplier B, but not U.S. supplier C, because C is blacklisted.

A may import chemicals from B rather than C, because the importation of specifically identifiable items for incorporation into another product is an importation for one's own use.

(ix) A, a U.S. management company which is a bona fide resident of boycotting country Y, has a contract with the Ministry of Education in Y to purchase supplies for Y's school system. From time to time, A purchases goods from abroad for delivery to various schools in Y.

A's purchase of goods for Y's school system does not constitute an importation of goods for A's own use, because A is acting as a procurement agent for another. A, therefore, cannot make boycott-based selections of suppliers of such school supplies.

(x) A, a U.S. company which is a bona fide resident of boycotting country Y, has a contract to make purchases for Y in connection with a construction project in Y. A is not engaged in the construction of, or in any other activity in connection with, the project. A's role is merely to purchase goods for Y and arrange for their delivery to Y.

A is not purchasing goods for its own use, because A is acting as a procurement agent for Y. A, therefore, cannot make boycott selections of suppliers of such goods.

(xi) A, a U.S. company which is a bona fide resident of boycotting country Y, imports specifically identifiable goods into Y for exhibit by A at a trade fair in Y. In selecting goods for exhibit, A excludes items made by blacklisted firms.

A's import of goods for its exhibit at a trade fair constitutes an import for A's own use. However, A may not sell in Y those goods it imported for exhibit.

FOR USE WITHIN BOYCOTTING COUNTRY

(i) A is a bona fide resident of boycotting countries Y and Z. In compliance with Y's boycott laws, A chooses specifically identifiable goods for its oil drilling operations in Y and Z by excluding blacklisted suppliers. The good are first imported into Y. Those purchased for A's use in Z are then transshipped to Z.

In selecting those goods for importation into Y, A is making an import selection for its own use, even though A may use some of the imported goods in Z. Further, the subsequent shipment from Y to Z of those goods purchased for use in Z is an import into Z for A's own use.

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§ 769.4 Evasion.

(a) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part. Nor may any United States person assist another United States person to violate or evade the provisions of this part.

(b) The exceptions set forth in § 769.3 (a) through (f) of this part do not permit activities or agreements (express or implied by a course of conduct, including a pattern of responses) which are otherwise prohibited by this part and which are not within the intent of such exceptions. However, activities within the coverage and intent of the exceptions set forth in this part do not constitute evasion regardless of how often such exceptions are utilized.

(c) Use of any artifice, device or scheme which is intended to place a person at a commercial disadvantage or impose on him special burdens because he is blacklisted or otherwise restricted for boycott reasons from having a business relationship with or in a boycotting country will be regar ed as evasion for purposes of this pa

(d) Unless permitted under one the exceptions, use of risk of loss pr visions that expressly impose a fina cial risk on another because of th import laws of a boycotting count may constitute evasion. If they are i troduced after the effective date this part, their use will be presumed t constitute evasion. This presumptio may be rebutted by a showing th such a provision is in customary usa without distinction between boycot ing and non-boycotting countries an that there is a legitimate non-boycot reason for its use. On the other hand use of such a provision by a Unite States person subsequent to the effe tive date of this part is presumed no to constitute evasion if the provisio had been customarily used by tha person prior to the effective date o this part.

(e) Use of dummy corporations o other devices to mask prohibited acti ity will also be regarded as evasion Similarly, it is evasion under this par to divert specific boycotting country orders from a United States parent to a foreign subsidiary for purposes of complying with prohibited boycott re quirements. However, alteration of a person's structure or method of doing business will not constitute evasion so long as the alteration is based on le gitimate business considerations and i not undertaken solely to avoid the ap plication of the prohibitions of this part. The facts and circumstances of an arrangement or transaction will be carefully scrutinized to see whether appearances conform to reality.

EXAMPLES

The following examples are intended to give guidance to persons in determining cir cumstances in which this section will apply They are illustrative, not comprehensive.

(i) A, a U.S. insurance company, receives a request from boycotting country Y askin whether it does business in boycotted coun try X. Because furnishing such informatio is prohibited, A declines to answer and as result is placed on Y's blacklist. The follow ing year, A's annual report contains new in formation about A's worldwide operations including a list of all countries in which A does business. A then mails a copy of its annual report, which has never before co tained such information, to officials of the government of country Y.

Absent some business justification unrelated to the boycott for changing the annual report in this fashion, A's action constitutes evasion of this part.

(ii) A, a U.S. construction firm resident in boycotting country Y, orders lumber from U.S. company B. A unilaterally selects B in part because U.S. lumber producer C is blacklisted by Y and C's products are therefore not importable. In placing its order with B, A requests that B stamp its name or logo on the lumber so that A "can be certain that it is, in fact, receiving B's products." B does not normally so stamp its lumber, and A's purpose in making the request is to appear to fit within the unilateral selection exception of this part.

Absent additional facts justifying A's action, A's action constitutes evasion of this part.

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years and routinely supplying negative certificates of origin. A is aware that the furnishing of negative certificates of origin will be prohibited after June 21, 1978 and, therefore, arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary certification before forwarding the machines on to Y.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling hand calculators to boycotting country Y for a number of years and routinely supplies negative certificates of origin. A is aware that the furnishing of such negative certificates will be prohibited after June 21, 1978. A thereupon ceases all direct sales to Y, and instead arranges to make all future sales to distributor B in a third country. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

(v) A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(vi) A, a U.S. contractor which has not previously dealt with boycotting country Y, is awarded a construction contract by Y. Because it is customary in the construction industry for a contractor to establish an onsite facility for the duration of the project, A establishes such an office, which satisfies the requirements for bona fide residency. Thereafter, A's office in Y takes a number of actions permitted under the compliance with local law exception.

A's actions do not constitute evasion, because A's facility in Y was established for legitimate business reasons.

(vii) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country M. A and B both make machine tools for sale in their respective marketing regions. B's marketing region includes boycotting country Y. After assessing the requirements of this part, B decides that it can no longer make machines for sale in Y. Instead, A decides to expand its facilities in M in order to service the Y market.

The actions of A and B do not constitute evasion, because there is a legitimate business reason for their actions. It is irrelevant that the effect may be to place sales which would otherwise have been subject to this part beyond the reach of this part.

(viii) A, a U.S. manufacturer, from time to time receives purchase orders from boycotting country Y which A fills from its plant in the United States. A knows that it is about to receive an order from Y which contains a request for a certification which A is prohibited from furnishing under this part. In order to permit the certification to be made, A diverts the purchase order to its foreign subsidiary.

A's diversion of the purchase order constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(ix) A, a U.S. company, is engaged in assembling drilling rigs for shipment to boycotting country Y. Because of potential difficulties in securing entry into Y of materials supplied by blacklisted firms, A insists that blacklisted firms take a 15 percent discount on all materials which they supply to A. As a result, no blacklisted firms are willing to transact with A.

A's insistence on the discount for materials supplied by blacklisted firms constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted firms because of Y's boycott.

(x) Same as (ix), except that shortly after the effective date of this part, A insists that its suppliers sign contracts which provide that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its suppliers prior to the effective date of this part.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to the effective date of this part.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after the effective date of this part, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for whatever reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

(xiii) Same as (xii), except that A requires that all suppliers make in-country delivery.

A's action does not constitute evasion, because it is an ordinary commercial practice to require in-country delivery of goods.

(xiv) Same as (xii), except that A requires that title remain with the supplier until delivery in Y has been made.

A's action does not constitute evasion, because it is ordinary commercial practice to require that title remain with the supplier until delivery has been made. This example is distinguishable from example (xii), because in example (xii) A had insisted on an extraordinary arrangement designed to require that the risk of loss remain with the supplier even after title had passed to A.

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

A's action constitutes evasion of this part, because the arrangement is a device to mask prohibited activity on A's part.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary B's foreign subsidiary so that A can impl ment the letter of credit. A knows that th has been done.

A's implementation of the letter of cred in the face of its knowledge of B's actio constitutes evasion of this part, because action is part of a device to mark prohibite activity on A's part.

(xvii) U.S. bank A, located in the Unit States, is contacted by foreign company to finance

B's transaction with boycotting count Y. B is a controlled subsidiary of a U.S. co pany. The transaction which is to be nanced with a letter of credit payable to at its foreign address, requires B to certi that none of its board members are of a p ticular religious faith. Since B cannot leg ly furnish the certificate, it asks A to conv the necessary information to Y through A bank branch in Y. Such information wou be furnished wholly outside the letter credit transaction.

A's action constitutes evasion of this pa because it is undertaken to assist B's vio tion of this part.

(xviii) U.S. bank A is asked by foreign c poration B to implement a letter of credit favor of B so that B might perform und its long-term contract with boycotting co try Y. Under the terms of the letter credit, B is required to certify that none its suppliers is blacklisted. A knows that cannot implement a letter of credit w this condition, so it tells B to negotiate t elimination of this requirement from t letter of credit and instead supply the cer fication to Y directly.

A's suggestion to B that it provide t negative certification to Y directly con tutes evasion of this part, because A taking an action through another person mask prohibited activity on A's part.

[43 FR 3534, Jan. 25, 1978. Redesignated 53 FR 37751, Sept. 28, 1988.]

§ 769.5 [Reserved]

§ 769.6 Reporting requirements.

(a) *Scope of reporting requirement* (1) A United States person who r ceives a request to take any actio which has the effect of furthering supporting a restrictive trade practi or boycott fostered or imposed by foreign country against a count friendly to the United States against any United States person mu report such request to the Departme of Commerce in accordance with th requirements of this section. Such request may be either written or or and may include a request to furnish information or enter into or implement an agreement. It may also include a solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action. Such a request shall e reported regardless of whether the ction requested is prohibited or permissible under this part, except as otherwise provided by this section.

(2) For purposes of this section, a request received by a United States person is reportable if he knows or has eason to know that the purpose of he request is to enforce, implement, r otherwise further, support or ecure compliance with an unsanctioned foreign boycott or restrictive rade practice.

(i) A request received by a United States person located in the United States is reportable if it is received in onnection with a transaction or activity in the interstate or foreign commerce of the United States, as determined under § 769.1(d) (1) through (5) nd (18).

(ii) A request received by a United States person located outside the nited States (that is, a foreign subsidiary, partnership, affiliate, branch, ffice, or other permanent foreign establishment which is controlled in fact y any domestic concern, as determined under § 769.1(c) is reportable if s received in connection with a ansaction or activity in the inter- ate or foreign commerce of the nited States, as determined under 69.1(d) (6) through (17) and (19).

iii) A request such as a boycott estionnaire, unrelated to a particu- transaction or activity, received by y United States person is reportable en such person has or anticipates a iness relationship with or in a boy- ting country involving the sale, pur- se or transfer of goods or services cluding information) in the inter- e or foreign commerce of the ited States, as determined under 9.1(d).

) These reporting requirements y to all United States persons. ey apply whether the United States on receiving the request is an ex- er, bank or other financial institution, insurer, freight forwarder, manufacturer, or any other United States person subject to this part.

(4) The acquisition of information about a boycotting country's boycott requirements through the receipt or review of books, pamphlets, legal texts, exporters' guidebooks and other similar publications does not constitute receipt of a reportable request for purposes of this section. In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.

(5) Because of the use of certain terms for boycott and non-boycott purposes; because of Congressional mandates to provide clear and precise guidelines in areas of inherent uncertainty; and because of the Department's commitment to minimize paperwork and reduce the cost of reporting where it will not impair the Department's ability to continue to monitor foreign boycotts, the following specific requests are not reportable:

(i) A request to refrain from shipping goods on a carrier which flies the flag of a particular country or which is owned, chartered, leased or operated by a particular country or by nationals or residents of a particular country, or a request to certify to that effect.

(ii) A request to ship goods via a prescribed route, or a request to refrain from shipping goods via a proscribed route, or a request to certify to either effect.

(iii) A request to supply an affirmative statement or certification regarding the country of origin of goods;

(iv) A request to supply an affirmative statement or certification regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services;

(v) A request to comply with the laws of another country except where the request expressly requires compliance with that country's boycott laws;

(vi) A request to an individual to supply information about himself or a member of his family for immigration, passport, visa, or employment purposes;

(vii) A request to supply an affirmative statement or certification indicating the destination of exports or confirming or otherwise indicating that such cargo will be unloaded or discharged at a particular destination.

(viii) A request to supply a certificate by the owner, master, charterer, or any employee thereof, that a vessel, aircraft, truck or any other mode of transportation is eligible, otherwise eligible, permitted, or allowed to enter, or not restricted from entering, a particular port, country, or group of countries pursuant to the laws, rules, or regulations of that port, country, or group of countries.

(ix) A request to supply a certificate from an insurance company stating that the issuance company has a duly authorized agent or representative within a boycotting county and/or the name and address of such agent.

(x) A request to comply with a term or condition of a transaction that provides that the vendor bear the risk of loss and indemnify the purchaser if the vendor's goods are denied entry into a country for any reason ("risk of loss clause") if such clause was in use by the purchaser prior to January 18, 1978.

(6) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part.

(7) From time to time the Department will survey domestic concerns for purposes of determining the worldwide scope of boycott requests received by their controlled foreign subsidiaries and affiliates with request to their activities outside United States commerce. This pertains to requests which would be reportable under this section but for the fact that the activities to which the requests relate are outside United States commerce. The information requested will include the number and nature of non-reportable boycott requests received, the action(s) requested, the actions(s) taken in response and the countries in which the requests originate. The results of such surveys, including the names of those surveyed, will be made public.

(b) *Manner of reporting.* (1) Eac portable request must be repo However, if more than one docu (such as an invitation to bid, purc order, or letter of credit) conta the same boycott request is receiv part of the same transaction, only first such request need be reported dividual shipments against the purchase order or letter of credit to be treated as part of the transaction. Each different boycot quest associated with a given tra tion must be reported, regardles how or when the request is receive

(2) Each United States person a ally receiving a reportable req must report that request. Howe such person may designate some else to report on his behalf. For ex ple, a United States company, if thorized, may report on behalf of controlled foreign subsidiary or af ate; a freight forwarder, if authoriz may report on behalf of the export and a bank, if authorized, may rep on behalf of the beneficiary of a let of credit. If a person designated report a request received by anoth receives an identical request direc to him in connection with the sa transaction, he may file one report behalf of himself and the oth person.

(3) Where a person is designated report on behalf of another, t person receiving the request remain liable for any failure to report or any representations made on h behalf. Further, anyone reporting behalf of another is not relieved of hi own responsibility for reporting a boycott request which he receive even if it is an identical request in co nection with the same transaction.

(4) Reports must be submitted in d plicate to: Report Processing Sta Office of Antiboycott Complian U.S. Department of Commerce, Roo 3899, Washington, DC 20230. Ea submission must be made in acco ance with the following requiremen

(i) Where the person receiving th request is a United States person lo cated in the United States, each repo of requests received through June 3 1979 must be postmarked by the la day of the month following the mon in which the request was receive

Thereafter, each submission must be postmarked by the last day of the month following the calendar quarter in which the request was received (e.g., April 30 for the quarter consisting of January, February, and March); and

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests received through June 30, 1979 must be postmarked by the last day of the second month following the month in which the request was received. Thereafter, each submission must be postmarked by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31 for the quarter consisting of January, February, and March).

(5) At the reporting person's option, reports may be submitted on either a single transaction form (Form ITA-621P, Report of Restrictive Trade Practice or Boycott Request Single Transaction OMB No. 0625-0036) or on a multiple transaction form (Form ITA-6051P, Report of Request for Restrictive Trade Practice or Boycott Multiple Transactions OMB No. 41-R2305). Use of the multiple transaction form permits the reporting person to provide on one form all required information relating to as many as 75 reportable requests received within any single reporting period.

(6) Reports, whether submitted on the single transaction form or on the multiple transaction form, must contain entries for every applicable item on the form, including whether the reporting person intends to take or has taken the action requested. If the reporting person has not decided what action he will take by the time the report is required to be filed, he must later report the action he decides to take within 10 business days after deciding. In addition, anyone filing a report on behalf of another must so indicate and identify that other person.

(7) Each report of a boycott request must be accompanied by two copies of the relevant page(s) of any document(s) in which the request appears. Reports may also be accompanied by any additional information relating to the request as the reporting person desires to provide concerning his response to the request.

(8) Records containing information relating to a reportable boycott request, including a copy of any document(s) in which the request appears, must be maintained by the recipient for a three-year period after the receipt of the request. The Department may require that these materials be submitted to it or that it have access to them at any time within that period. (*See* § 787.13 for additional recordkeeping requirements.)

(c) *Disclosure of information.* (1) Reports of requests received on or after October 7, 1976, as well as any accompanying documents filed with the reports, have been and will continue to be made available for public inspection and copying, except for certain proprietary information. With respect to reports of requests received on or after August 1, 1978, if the person making the report certifies that a United States person to whom the report relates would be placed at a competitive disadvantage because of the disclosure of information regarding the quantity, description, or value of any articles, materials, and supplies, including related technical data and other information, whether contained in a report or in any accompanying document(s), such information will not be publicly disclosed except upon failure by the reporting entity to edit the public inspection copy of the accompanying document(s) as provided by paragraph (c)(2), unless the Secretary of Commerce determines that the disclosure would not place the United States person involved at a competitive disadvantage or that it would be contrary to the national interest to withhold the information. In the event the Secretary of Commerce considers making such a determination concerning competitive disadvantage, appropriate notice and an opportunity for comment will be given before any such proprietary information is publicly disclosed. In no event will requests of reporting persons to withhold any information contained in the report other than that specified above be honored.

(2) Because a copy of any document(s) accompanying the report will be made available for public inspection and copying, one copy must be submitted intact and another copy must be edited by the reporting entity to delete the same information which it certified in the report would place a United States person at a competitive disadvantage if disclosed. In addition, the reporting entity may delete from this copy information that is considered confidential and that is not required to be contained in the report (e.g., information related to foreign consignee). This copy should be conspicuously marked with the legend "Public Inspection Copy." With respect to documents accompanying reports received by the Department on or after July 1, 1979, the public inspection copy will be made available as submitted whether or not it has been appropriately edited by the reporting entity as provided by this paragraph.

(3) Reports and accompanying documents which are available to the public for inspection and copying are located in the BXA Freedom of Information Records Inspection Facility, Room H-4886, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Requests to inspect such documents should be addressed to that facility.

(4) The Secretary of Commerce will periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies in section 3(5) of the Export Administration Act of 1979, as amended.

EXAMPLES

The following examples are intended to give guidance in determining what is reportable. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, is shipping goods to boycotting country Y and is asked by Y to certify that it is not blacklisted by Y's boycott office.

The request to A is reportable, because it is a request to A to comply with Y's boycott requirements.

(ii) A, a U.S. manufacturing company, receives an order for tractors from boycotting country Y. Y's order specifies that the tires on the tractors be made by B, another U.S. company. A believes Y has specified B as the tire supplier because otherwise A would have used tires made by C, a blacklisted company, and Y will not take shipment of tractors containing tires made by blacklisted companies.

A must report Y's request for tires made by B, because A has reason to know that B was chosen for boycott reasons.

(iii) Same as (ii), except A knows that Y's request has nothing to do with the boycott but simply reflects Y's preference for tires made by B.

Y's request is not reportable, because it is unrelated to Y's boycott.

(iv) Same as (ii), except A neither knows nor has reason to know why Y has chosen B.

Y's request is not reportable, because A neither knows nor has reason to know that Y's request is based on Y's boycott.

(v) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is a general contractor. After being supplied by A with a list of competent subcontractors, A's customer instructs A to use subcontractor C on the project. A believes that C was chosen because, among other things, the other listed subcontractors are blacklisted.

The instruction to A by its customer that C be used on the project is reportable, because it is a request to comply with Y's boycott requirements.

(vi) A, a controlled foreign subsidiary of U.S. company B, is located in nonboycotting country P. A receives an order for washing machines from boycotting country Y. Y instructs A that a negative certificate of origin must accompany the shipment. The washing machines are made wholly in P, without U.S. components.

Y's instruction to A regarding the negative certificate of origin is not reportable, because the transaction to which it relates is not in U.S. commerce.

(vii) Same as (vi), except that A obtains components from the United States for the purpose of filling the order from Y.

Y's instruction to A regarding the negative certificate of origin is reportable, because the transaction to which it relates is in U.S. commerce.

(viii) A, a U.S. construction company, receives in the mail an unsolicited invitation to bid on a construction project in boycotting country Y. The invitation to bid requires those who respond to certify that they do not have any plants or branch offices in boycotted country X. A does not respond.

A's receipt of the unsolicited invitation to bid is not reportable, because the request does not relate to any present or anticipated business of A with or in Y.

(ix) Same as (viii), except that A receives a boycott questionnaire from a central boycott office. A does not do business in any of the boycotting countries involved, and does not anticipate doing any business in those countries. A does not respond.

A's receipt of the boycott questionnaire is not reportable, because it does not relate to any present or anticipated business by A with or in a boycotting country.

(x) A, a U.S. manufacturer, is seeking markets in which to expand its exports. A sends a representative to boycotting country Y to explore Y's potential as a market for A's products. A's representative discusses its products but does not enter into any contracts on that trip. A does, however, hope that sales will materialize in the future. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because the request relates to A's anticipated business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire, and it makes no difference that actual sales contracts are not in existence or do not materialize.

(xi) Same as (x), except that A's representative enters into a contract to sell A's products to a buyer in boycotting country Y. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because it relates to A's present business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire.

(xii) A, a U.S. freight forwarder, purchases an exporters' guidebook which includes the import requirements of boycotting country Y. The guidebook contains descriptions of actions which U.S. exporters must take in order to make delivery of goods to Y.

A's acquisition of the guidebook is not reportable, because he has not received a request from anyone.

(xiii) A, a U.S. freight forwarder, is arranging for the shipment of goods to boycotting country Y at the request of B, a U.S. exporter. B asks A to assume responsibility to assure that the documentation accompanying the shipment is in compliance with Y's import requirements. A examines an exporters' guidebook, determines that Y's import regulations require a certification that the insurer of the goods is not blacklisted and asks U.S. insurer C for such a certification.

B's request to A is reportable by A, because it constitutes a request to comply with Y's boycott as of the time A takes action to comply with Y's boycott requirements in response to the request. A's request to C is reportable by C.

(xiv) A, a U.S. freight forwarder, is arranging for the shipment of U.S. goods to boycotting country Y. The manufacturer supplies A with all the necessary documentation to accompany the shipment. Among the documents supplied by the manufacturer is his certificate that he himself is not blacklisted. A transmits the documentation supplied by the manufacturer.

A's action in merely transmitting documents received from the manufacturer is not reportable, because A has received no request to comply with Y's boycott.

(xv) Same as (xiv), except that A is asked by U.S. exporter B to assume the responsibility to assure that the necessary documentation accompanies the shipment whatever that documentation might be. B forwards to A a letter of credit which requires that a negative certificate of origin accompany the bill of lading. A supplies a positive certificate of origin.

Both A and B must report receipt of the letter of credit, because it contains a request to both of them to comply with Y's boycott.

(xvi) Same as (xiv), except that the manufacturer fails to supply a required negative certificate of origin, and A is subsequently asked by a consular official of Y to see to it that the certificate is supplied. A supplies a positive certificate of origin.

The consular official's request to A is reportable by A, because A was asked to comply with Y's boycott requirements by supplying the negative certificate of origin.

(xvii) A, a U.S. manufacturer, is shipping goods to boycotting country Y. Arrangements have been made for freight forwarder B to handle the shipment and secure all necessary shipping certifications. B notes that the letter of credit requires that the manufacturer supply a negative certificate of origin and B asks A to do so. A supplies a positive certificate of origin.

B's request to A is reportable by A, because A is asked to comply with Y's boycott requirements by providing the negative certificate.

(xviii) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is engaged in oil exploration and drilling operations in Y. In placing orders for drilling equipment to be shipped from the United States, A, in compliance with Y's laws, selects only those suppliers who are not blacklisted.

A's action in choosing nonblacklisted suppliers is not reportable, because A has not received a request to comply with Y's boycott in making these selections.

(xix) A, a controlled foreign subsidiary of U.S. company B, is seeking permission to do business in boycotting country Y. Before being granted such permission, A is asked to sign an agreement to comply with Y's boycott laws.

The request to A is reportable, because it is a request that expressly requires compliance with Y's boycott law and is received in connection with A's anticipated business in Y.

(xx) A, a U.S. bank, is asked by a firm in boycotting country Y to confirm a letter of credit in favor of B, a U.S. company. The letter of credit calls for a certificate from B that the goods to be supplied are not produced by a firm blacklisted by Y. A informs B of the letter of credit, including its certification condition, and sends B a copy.

B must report the certification request contained in the letter of credit, and A must report the request to confirm the letter of credit containing the boycott condition, because both are being asked to comply with Y's boycott.

(xxi) Same as (xx), except that the letter of credit calls for a certificate from the beneficiary that the goods will not be shipped on a vessel that will call at a port in boycotted country X before making delivery in Y.

The request is not reportable, because it is a request of a type deemed by this section to be in common use for nonboycott purposes.

(xxii) A, a U.S. company, receives a letter of credit from boycotting country Y stating that on no condition may a bank blacklisted by Y be permitted to negotiate the credit.

A's receipt of the letter of credit is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiii) A, a U.S. bank, receives a demand draft from B, a U.S. company, in connection with B's shipment of goods to boycotting country Y. The draft contains a directive that it is valid in all countries except boycotted country X.

A's receipt of the demand draft is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiv) A, a U.S. exporter, receives an order from boycotting country Y. On the order is a legend that A's goods, invoices, and packaging must not bear a six-pointed star or other symbol of boycotted country X.

A's receipt of the order is reportable, because it contains a request to comply with Y's boycott requirements.

(xxv) Same as (xxiv), except the order contains a statement that goods exported must not represent part of war reparations to boycotted country X.

A's receipt of the order is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxvi) A, a U.S. contractor, is negotiating with boycotting country Y to build a school in Y. During the course of the negotiations, Y suggests that one of the terms of the construction contract be that A agree not to import materials produced in boycotted
country X. It is A's company policy n
agree to such a contractual clause, a
suggests that instead it agree that all o
necessary materials will be obtained
U.S. suppliers. Y agrees to A's sugge
and a contract is executed.

A has received a reportable request,
for purposes of reporting, the reque
deemed to be received when the contra
executed.

(xxvii) Same as (xxvi), except Y does
accept A's suggested alternative clause
negotiations break off.

A's receipt of Y's request is reporta
For purposes of reporting, it makes no
ference that A was not successful in the
gotiations. The request is deemed to be
ceived at the time the negotiations br
off.

(xxviii) A, a U.S. insurance company, i
suring the shipment of drilling equipm
to boycotting country Y. The transactio
being financed by a letter of credit wh
requires that A certify that it is not bla
listed by Y. Freight forwarder B asks A
supply the certification in order to sati
the requirements of the letter of credit.

The request to A is reportable by A, b
cause it is a request to comply with Y's bo
cott requirements.

(xxix) A, a U.S. manufacturer, is engag
from time-to-time in supplying drilling ri
to company B in boycotting country Y. B i
sists that its suppliers sign contracts whic
provide that, even after title passes fro
the supplier to B, the supplier will bear th
risk of loss and indemnify B if goods whic
the supplier has furnished are denied entr
into Y for whatever reason. A knows or h
reason to know that this contractual prov
sion is required by B because of Y's boycott
and that B has been using the provision
since 1977. A receives an order from B
which contains such a clause. B's request i
not reportable by A, because the request i
deemed to be not reportable by these reg
lations if the provision was in use by B prio
to the effective date of the regulations, Ja
uary 18, 1978.

(xxx) Same (xxix), except that A does n
know when B began using the provision.

Unless A receives information from B tha
B introduced the term prior to the effectiv
date of the regulations, January 18, 1978, A
must report receipt of the request.

(xxxi) A, a U.S. citizen, is a shipping cle
for B, a U.S. manufacturing company. I
the course of his employment, A receives a
order for goods from boycotting country Y.
The order specifies that none of the comp
nents of the goods is to be furnished b
blacklisted firms.

B must report the request received by it
employee, A, acting in the scope of his em
ployment. Although A is a U.S. person, suc
an individual does not have a separate ob

gation to report requests received by him in his capacity as an employee of B.

(xxxii) U.S. exporter A is negotiating a transaction with boycotting country Y. A knows that at the conclusion of the negotiations he will be asked by Y to supply certain boycott-related information and that such a request is reportable. In an effort to forestall the request and thereby avoid having to file a report, A supplies the information in advance.

A is deemed to have received a reportable request.

(xxxiii) A, a controlled foreign affiliate of U.S. company B, receives an order for computers from boycotting country Y and obtains components from the United States for the purpose of filling the order. Y instructs A that a negative certificate of origin must accompany the shipment.

Y's instruction to A regarding the negative certificate of origin is reportable by A. Moreover, A may designate B or any other person to report on its behalf. However, A remains liable for any failure to report or for any representations made on its behalf.

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the owner or master of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose. *See* Supp. 1, 43 FR 16969 (1978) and Supp. 2, 44 FR 67374 (1979).)

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations.

(xxxvi) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the insurance company indicating that the company has a duly authorized representative in country Y and giving the name of that representative.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations.

(Approved by the Office of Management and Budget under control number 0625-0036)

[43 FR 29080, July 5, 1978, as amended at 44 FR 30321, May 25, 1979; 45 FR 59300, Sept. 9, 1980; 47 FR 15108, Apr. 8, 1982; 47 FR 38504, Sept. 1, 1982; 47 FR 57677, Dec. 28, 1982; 48 FR 20043, May 4, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988; 54 FR 13055, Mar. 30, 1989]

§ 769.7 [Reserved]

§ 769.8 Grace period.

GRACE PERIOD MECHANISM

(a) For written contracts or other agreements entered into by any United States person on or before May 16, 1977, the application of the rules and regulations issued pursuant to this part shall be delayed until December 31, 1978. Hence, actions otherwise prohibited by this part may be taken in compliance with the requirements of such agreements until the expiration of the grace period.

(b) This grace period may be extended on a case-by-case basis for a period or periods totaling not longer than one year (to December 31, 1979), *Provided,* That:

(1) Good faith efforts are being made to renegotiate the contract or agreement to eliminate provisions which are inconsistent with the rules and regulations of this part; and

(2) Application for any extension is made, in writing, to the Assistant Secretary for Export Enforcement, United States Department of Commerce, Washington, DC 20230.

Each application must contain a complete statement of all the facts and circumstances related to the application, as well as a full and precise statement of why the applicant believes his extension should be granted. Any additional evidence or documentation which the applicant believes will support his position should be submitted.

(c) The decision of the Assistant Secretary for Export Enforcement will be the final decision for the Department, and will be issued to the applicant in writing. In reaching such decision, the Deputy Assistant Secretary may consult with representatives of government agencies and members of the public as he deems appropriate.

(d) For purposes of this section, good faith efforts may include:

(1) Ongoing negotiations, even if no actual agreement has been reached, if it appears that the parties are striving for such agreement;

(2) Compliance in fact by the United States person with the rules and regulations of this part, even if the language of the contract or agreement has not yet been changed; or

(3) Documentation that efforts are being made to bring the contract or agreement into compliance with the rules and regulations of this part.

(e) No extensions may be granted past December 31, 1979.

(f) The mere existence of an agreement containing provisions which are prohibited under this part is not a violation of this part if entered into on or before the effective date of this part. However, actions taken pursuant to such provisions after such effective date are in violation of this part unless the agreement is subject to the grace period. In that event, such actions are in violation of this part if taken after the expiration of the grace period.

EXAMPLES OF THE GRACE PERIOD MECHANISM

The following examples are intended to give guidance in determining the applicability of the grace period mechanism. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, entered into a contract on March 13, 1977, to supply medical equipment not later than June 20, 1978, to B, a state-owned hospital of boycotting country Y. Under the terms of the contract, A is not permitted to purchase electrical componenets for the equipment from supplier C, who is blacklisted by Y.

A may comply with the terms of the contract after the effective date of this part, because the contract was entered into on or before May 16, 1977, and the otherwise prohibited action would take place during the grace period.

(ii) Same as (i), except that the contract requires annual purchases and deliveries of medical equipment on June 20, 1978, June 20 1979, and June 20, 1980.

If A has made good faith efforts to renegotiate the contract to eliminate the provisions inconsistent with this part, A may apply for and the Assistant Secretary for Export Enforcement may grant an appropriate extension of the grace period up to December 31, 1979. However, in no event may the grace period be extended to cover purchases and deliveries made after that date.

(iii) Same as (ii), except that A has been granted an extension of the grace period through December 31, 1979.

A may not receive any further extensions and may not take any action after December 31, 1979, which is inconsistent with this part.

(iv) A, a U.S. management firm, entered into a services contract on May 1, 1977, with B, a retail chain in boycotting country Y. Subsequent to May 16, 1977, but before December 31, 1978, the payment schedule and other provisions of the contract unrelated to the boycott are amended by the parties.

The applicability of the grace period is not altered by amendments to the contract or agreement which are made for business reasons after May 16, 1977.

(v) Same as (iv), except that subsequent to May 16, 1977, but before December 31, 1978, the parties amend the contract so as to require A to engage in certain boycott activities prohibited by this part.

Grace period treatment is not applicable to prohibited boycott conditions agreed to after May 16, 1977.

(vi) A, a U.S. aircraft manufacturer, entered into an agreement with boycotting country Y on September 15, 1977, after the May 16, 1977 date for qualifying for the grace period but before the effective date of this part.

A's contract does not qualify for grace period treatment, and A may not take any action pursuant to the September 15, 1977 contract after the effective date of this part if such action would be inconsistent with this part.

(vii) A, a U.S. computer manufacturer, entered into a licensing agreement with boycotting country Y in 1974. Pursuant to that agreement, A agreed not to open a manufacturing plant in boycotted country X for a period of 10 years.

Absent an extension of the grace period, A may not act in compliance with this contract provision after December 31, 1978. Although A has no affirmative obligation to open a plant in X, any decision after December 31, 1978, not to open a plant in X because of A's agreement with Y would constitute a refusal to deal with X.

(viii) A, a U.S. manufacturer of bicycles, has a contract to supply bicycles to boycotting country Y. The contract was entered into on June 1, 1977, and calls for deliveries on June 1, 1978, and June 1, 1979. In the contract, A has agreed that none of the parts of the bicycles will be supplied by blacklisted firms.

The contract, which was entered into after May 16, 1977, is not entitled to grace period treatment. However, the mere existence of the contract on the effective date of this part is not a violation of this part, and no violation occurs unless and until A takes action to exclude blacklisted firms from purchases for shipments to Y.

(ix) A, a U.S. distributor, has been negotiating with boycotting country Y since April 1977, over terms of a proposed contract. Final agreement is not reached and a contract is not signed until May 31, 1977.

The contract does not qualify for grace period treatment, and A may not backdate the contract to May 16, 1977, to take advantage of the grace period.

(x) Same as (ix), but although the final agreement is concluded on May 10, 1977, the ritten instrument is not signed until May 6. The agreement was legally enforceable n May 10.

The agreement qualifies for grace period eatment.

(xi) U.S. company B has a contract with oycotting country Y to supply a certain antity of air conditioners each month er a two-year period. B's contract was entered into on May 15, 1977, and thus quali es for grace period treatment. The conact specifies that each shipment be accomanied by a certification that none of the mponents of the air conditioners were pplied by any company blacklisted by Y. has asked U.S. freight forwarder A to ndle the shipments and make any necesry certifications.

A may make the monthly certifications as ng as B's contract with Y qualifies for ace period treatment.

3 FR 3536, Jan. 25, 1978. Redesignated at FR 5512, Feb. 9, 1978, and amended at 45 R 59300, Sept. 9, 1980. Redesignated at 53 R 37751, Sept. 28, 1988 and amended at 54 R 13055, Mar. 30, 1989]

SUPPLEMENT NO. 1

INTERPRETATIONS

t has come to the Department's attention at some U.S. persons are being or may be ed to comply with new boycotting coun requirements with respect to shipping d insurance certifications and certificates origin. It has also come to the Department's attention that some U.S. persons are ng or may be asked to agree to new conctual provisions in connection with cer n foreign government or foreign govern t agency contracts. In order to maxi e its guidance with respect to Title II of e Export Administration Amendments of 7 (Pub. L. 95-52) and the regulations on trictive trade practices or boycotts, 15 R Part 369 published in the FEDERAL REGer of January 25, 1978 (43 FR 3508), (regnated as 15 CFR Part 769 at 53 FR 51, Sept. 28, 1988), the Department eby sets forth its views on these certifions and contractual clauses.

I. CERTIFICATIONS

Section 769.2(d) of the regulations prohibits a U.S. person from furnishing or knowingly agreeing to furnish:

"Information concerning his or any other person's past, present or proposed business relationships:

(i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country."

This prohibition, like all others under Part 769, applies only with respect to a U.S. person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. Section 769.2(d)(5).

This prohibition does not apply to the furnishing of normal business information in a commercial context. Section 769.2(d)(3). Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. Section 769.2(d)(4).

The new certification requirements and the Department's interpretation of the applicability of Part 769 thereto are as follows:

A. *Certificate of origin.* A certificate of origin is to be issued by the supplier or exporting company and authenticated by the exporting country, attesting that the goods exported to the boycotting country are of purely indigenous origin, and stating the name of the factory or the manufacturing company. To the extent that the goods as described on the certificate of origin are not solely and exclusively products of their country of origin indicated thereon, a declaration must be appended to the certificate of origin giving the name of the supplier/manufacturer and declaring:

"The undersigned, ————, does hereby declare on behalf of the above-named supplier/manufacturer, that certain parts or components of the goods described in the attached certificate of origin are the products of such country or countries, other than the country named therein as specifically indicated hereunder:

Country of origin and percentage of value of parts or components relative to total shipment

1. ——————————————.
2. ——————————————.
3. ——————————————.

Dated: ————.

Signature ——————.

Sworn to before me, this —— day of ————, 19——. Notary Seal."

INTERPRETATION

It is the Department's position that furnishing a positive certificate of origin, such as the one set out above, falls within the exception contained in § 769.3(b) for compliance with the import and shipping document requirements of a boycotting country. See § 769.3(b) and examples (i) and (ii) thereunder.

B. *Shipping certificate.* A certificate must be appended to the bill of lading stating: (1) Name of vessel; (2) nationality of vessel; and (3) owner of vessel, and declaring:

"The undersigned does hereby declare on behalf of the owner, master, or agent of the above-named vessel that said vessel is not registered in the boycotted country or owned by nationals or residents of the boycotted country and willl not call at or pass through any boycotted country port enroute to its boycotting country destination.

"The undersigned further declares that said vessel is otherwise eligible to enter into the ports of the boycotting country in conformity with its laws and regulations.

Sworn to before me, this —— day of ————, 19——. Notary Seal."

INTERPRETATION

It is the Department's position that furnishing a certificate, such as the one set out above, stating: (1) The name of the vessel, (2) the nationality of the vessel, and (3) the owner of the vessel and further declaring that the vessel: (1) Is not registered in a boycotted country, (2) is not owned by nationals or residents of a boycotted country, and (3) will not call at or pass through a boycotted country port en route to its destination in a boycotting country falls within the exception contained in § 769.3(b) for compliance with the import and shipping document requirements of a boycotting country. See § 769.3(b) and examples (vii), (viii), and (ix) thereunder.

It is also the Department's position that the owner, charterer, or master of a vessel may certify that the vessel is "eligible" or "otherwise eligible" to enter into the ports of a boycotting country in conformity with its laws and regulations. Furnishing such a
statement pertaining to one's own eligi
offends no prohibition under Part 769.
§ 769.2(f), example (xiv).

On the other hand, where a boycott
force, a declaration that a vessel is "eligi
or "otherwise eligible" to enter the por
the boycotting country necessarily co
the information that the vessel is not bl
listed or otherwise restricted from havi
business relationship with the boycot
country. See § 769.3(b), examples (vi),
and (xii). Where a person other than
vessel's owner, charterer, or master
nishes such a statement, that is tantam
to his furnishing a statement that he is
doing business with a blacklisted perso
is doing business only with nonblackli
persons. Therefore, it is the Departme
position that furnishing such a certifica
(which does not reflect customary inte
tional commercial practice) by anyone ot
than the owner, charterer, or master o
vessel would fall within the prohibition
forth in § 769.2(d) unless it is clear from
the facts and circumstances that the cert
cation is not required for a boycott rea
See § 769.2(d) (3) and (4). However, in
cordance with the exception contained
§ 769.3(b) for compliance with the imp
and shipping document requirements o
boycotting country, such a United Sta
person may furnish such a certifica
until June 21, 1978.

C. *Insurance certificate.* A certificate m
be appended to the insurance policy stat
(1) Name of insurance company; (2) addr
of its principal office; and (3) country of
incorporation, and declaring:

"The undersigned, ————,
hereby certify on behalf of the ab
named insurance company that the
company has a duly qualified and appoi
agent or representative in the boycott
country whose name and address ap
below:

Name of agent/representative and addr
in the boycotting country

Sworn to before me this —— day
————, 19——. Notary Seal."

INTERPRETATION

It is the Department's position that f
nishing the name of the insurance com
falls within the exception contained
§ 769.3(b) for compliance with the im
and shipping document requirements o
boycotting country. See § 769.3(b)(1)(v)
examples (v) and (x) thereunder. In
tion, it is the Department's position
furnishing a certificate, such as the one
out above, stating the address of the in
ance company's principal office and
country of incorporation offends no pro
tion under Part 769 unless the U.S. p

furnishing the certificate knows or has reason to know that the information is sought for the purpose of determining that the insurance company is neither headquartered nor incorporated in a boycotted country. See § 769.2(d)(1)(i).

It is also the Department's position that the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative. Furnishing such a statement pertaining to one's own status offends no prohibition under Part 769. See § 769.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that an insurer "has a duly qualified and appointed agent or representative" in the boycotting country necessarily conveys the information that the insurer is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See § 769.3(b), example (v). Therefore, it is the Department's position that furnishing such a certification by anyone other than the insurer would fall within the prohibition set forth in § 769.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See § 769.2(d)(3) and (4). However, in accordance with the exception contained in § 769.3(b) for compliance with the import and shipping document requirements of a boycotting country, such a U.S. person may furnish such a certification until June 21, 1978.

II. CONTRACTUAL CLAUSES

The new contractual requirements and the Department's interpretation of the applicability of Part 769 thereto are as follows:

A. *Contractual clause regarding import laws of boycotting country.* "In connection with the performance of this contract the Contractor/Supplier acknowledges that the import and customs laws and regulations of the boycotting country shall apply to the furnishing and shipment of any products or components thereof to the boycotting country. The contractor/supplier specifically acknowledges that the aforementioned import and customs laws and regulations of the boycotting country prohibit, among other things, the importation into the boycotting country of products or components thereof: (1) Originating in the boycotted country; (2) manufactured, produced, or furnished by companies organized under the laws of the boycotted country; and (3) manufactured, produced, or furnished by nationals or residents of the boycotted country."

INTERPRETATION

It is the Department's position that an agreement, such as the one set out in the first sentence above, that the import and customs requirements of a boycotting country shall apply to the performance of a contract does not, in and of itself, offend any prohibition under Part 769. See § 769.2(a)(5) and example (iii) under "Examples of Agreements To Refuse To Do Business." It is also the Department's position that an agreement to comply generally with the import and customs requirements of a boycotting country does not, in and of itself, offend any prohibition under Part 769. See § 769.2(a)(5) and examples (iv) and (v) under "Examples of Agreements To Refuse To Do Business." In addition, it is the Department's position that an agreement, such as the one set out in the second sentence above, to comply with the boycotting country's import and customs requirements prohibiting the importation of products or components: (1) Originating in the boycotted country; (2) manufactured, produced, or furnished by companies organized under the laws of the boycotted country; or (3) manufactured, produced, or furnished by nationals or residents of the boycotted country falls within the exception contained in § 769.3(a-1) for compliance with the import requirements of a boycotting country. See § 769.3(a-1) and example (ii) thereunder.

The Department notes that, after June 21, 1978, a United States person may not furnish a negative certification regarding the origin of goods or their components even though the certification is furnished in response to the import and shipping document requirements of the boycotting country. See § 769.3(b) and examples (i), (ii), and (iii) thereunder; and § 769.3(a-1) and example (ii) thereunder.

B. *Contractual clause regarding unilateral and specific selection.* "The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract."

INTERPRETATION

It is the Department's position that an agreement, such as the one set out above, falls within the exception contained in § 769.3(c) for compliance with unilateral selections. However, the Department notes that whether a U.S. person may subsequently comply or agree to comply with any particular selection depends upon whether that selection meets all the requirements contained in § 769.3(c) for compliance with unilateral selections. For example, the particular selection must be unilateral and specific, particular goods must be specifically identifiable as to their source or origin at the time of their entry into the boycotting country, and all other requirements contained in § 769.3(c) must be observed.

[43 FR 16969, Apr. 21, 1978; 43 FR 59340, Dec. 20, 1978. Redesignated at 47 FR 57677, Dec. 28, 1982. Further redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 2

INTERPRETATIONS

In the FEDERAL REGISTER of April 21, 1978 (43 FR 16969), the Department set forth its views on whether the furnishing of certain shipping and insurance certificates in compliance with boycotting country requirements violated the provisions of Title II of the Export Administration Amendments of 1977 (50 U.S.C. App. 2401-2413) (1976 & Supp. I 1977) and the regulations on restrictive trade practices or boycotts (15 CFR Part 369 (1979), redesignated as 15 CFR Part 769 at 53 FR 37751, Sept. 28, 1988). In that context, the Department stated its position that (i) "the owner, charterer or master of a vessel may certify that the vessel is 'eligible' or 'otherwise eligible' to enter into the ports of a boycotting country in conformity with its laws and regulations," and (ii) "the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative."

Under its April 21, 1978, Interpretation, the Department also stated that furnishing such certifications by anyone other than (i) the owner, charterer or master of a vessel or (ii) the insurer would fall within the prohibition set forth in 15 CFR 769.2(d), "unless it is clear from all the facts and circumstances that these certifications are not required for a boycott reason." *See* 15 CFR 769.2(d) (3) and (4).

Since the publication of that Interpretation, the Department has received from the Kingdom of Saudi Arabia a clarification that the shipping and insurance certifications are required by Saudi Arabia in order to (i) demonstrate that there are no applicable restrictions under Saudi laws or regulations pertaining to maritime matters such as the age of the ship, the condition of the ship, and similar matters that would bar entry of the vessel into Saudi ports; and (ii) facilitate dealings with insurers by Saudi Arabian importers whose ability to secure expeditious payments in the event of damage to insured goods may be adversely affected by the absence of a qualified agent or representative of the insurer in Saudi Arabia. In the Department's judgment, this clarification constitutes sufficient facts and circumstances to demonstrate that the certifications are not required by Saudi Arabia for boycott reasons.

On the basis of this clarification, it
Department's position that any U
States person may furnish such shipp
surance certificates required by
Arabia without violating 15 CFR 76
Moreover, under these circumstance
ceipt of requests for such shipping a
surance certificates from Saudi Ara
not reportable.

It is still the Department's position
furnishing such a certificate pertaini
one's own eligibility offends no prohib
under Part 769. See 15 CFR 769.2(f), e
ple (xiv). However, absent facts and ci
stances clearly indicating that the cert
tions are required for ordinary comme
reasons as demonstrated by the Saudi
fication, furnishing certifications abou
eligibility or blacklist status of any
person would fall within the prohibitio
forth in § 769.2(d), and receipt of req
for such certifications is reportable.

It also remains the Department's po
that where a United States person as
insurer or carrier of the exporter's goo
self-certify, such request offends no pro
tion under this part. However, whe
United States person asks anyone
than an insurer or carrier of the expor
goods to self-certify, such requests wi
considered by the Department as evide
of the requesting person's refusal to do
ness with those persons who cannot or
not furnish such a self-certification. Fo
ample, if an exporter-beneficiary of a le
of credit asks his component supplier
self-certify, such a request will be co
ered as evidence of his refusal to do bus
with those component suppliers who ca
or will not furnish such a self-certificat

The Department wishes to emphasize th
notwithstanding the fact that self-certifi
tions are permissible, it will closely scr
nize the activities of all United States p
sons who provide such self-certifications i
cluding insurers and carriers, to determ
that such persons have not taken any p
hibited actions or entered into any prohib
ed agreements in order to be able to furn
such certifications.

[44 FR 67374, Nov. 26, 1979, as amended
47 FR 57677, Dec. 28, 1982. Redesignated
53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 3

INTERPRETATIONS

Pursuant to Article 2, Annex II of th
Peace Treaty between Egypt and Isr
Egypt's participation in the Arab econ
boycott of Israel was formally termin
on January 25, 1980. On the basis of th
action, it is the Department's position th
certain requests for information, action

agreement which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Arab Republic of Egypt ports has been considered a boycott-related request that the exporter could not comply with because Egypt has a boycott in force against Israel (*See* 43 FR 16969, April 21, 1978). Such a request after January 25, 1980, would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Egyptian government officials to furnish the place of birth of employees the company is seeking to take to Egypt, because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country or origin. For example, requests containing references to "blacklisted companies", "Israel boycott list", "non-Israeli goods" or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

[45 FR 29010, May 1, 1980, as amended at 47 FR 57677, Dec. 28, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 4

INTERPRETATION

The question has arisen how the definition of U.S. commerce in the antiboycott regulations (15 CFR Part 769) applies to a shipment of foreign-made goods when U.S.-origin spare parts are included in the shipment. Specifically, if the shipment of foreign goods falls outside the definition of U.S. commerce, will the inclusion of U.S.-origin spare parts bring the entire transaction into U.S. commerce?

Section 769.1(d)(12) of the Regulations provides the general guidelines for determining when U.S.-origin goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were (1) acquired without reference to a specific order, and (2) further manufactured, incorporated or reprocessed into another product. Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

In the cases brought to the Department's attention, an order for foreign-origin goods was placed with a controlled in fact foreign subsidiary of a United States company. The foreign goods contained components manufactured in the United States and in other countries, and the order included a request for extras of the U.S. manufactured components (spare parts) to allow the customer to repair the item. Both the foreign manufactured product and the U.S. spare parts were to be shipped from the general inventory of the foreign subsidiary. Since the spare parts, if shipped by themselves, would be in U.S. commerce as that term is defined in the Regulations, the question was whether including them with the foreign manufactured item would bring the entire shipment into U.S. commerce. The Department has decided that it will not and presents the following specific guidance.

As used above, the term "spare parts" refers to parts of the quantities and types normally and customarily ordered with a product and kept on hand in the event they are needed to assure prompt repair of the product. Parts, components or accessories that improve or change the basic operations or design characteristics, for example, as to accuracy, capability or productivity are not spare parts under this definition.

Inclusion of U.S.-origin spare parts in a shipment of products which is otherwise outside U.S. commerce will not bring the transaction into U.S. commerce if the following conditions are met:

(I) The parts included in the shipment are acquired from the United States by the controlled in fact foreign subsidiary without reference to a specific order from or transaction with a person outside the United States;

(II) The parts are identical to the corresponding U.S.-origin parts which have been manufactured, incorporated into or reprocessed into the completed product;

(III) The parts are of the quantity and type normally and customarily ordered with the completed product and kept on hand by the firm or industry of which the firm is a part to assure prompt repair of the product; and

(IV) The parts are covered by the same order as the completed product and are shipped with or at the same time as the original product.

The Department emphasizes that unless each of the above conditions is met, the inclusion of U.S.-origin spare parts in an order for a foreign-manufactured or assembled product will bring the entire transaction into the interstate or foreign commerce of the United States for purposes of Part 769.

[46 FR 40001, Aug. 6, 1981, as amended at 47 FR 57677, Dec. 28, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 5

INTERPRETATION

A. Permissible Furnishing of Information

The information outlined below may be furnished in response to boycott-related requests from boycotting countries or others. This information is, in the view of the Department, not prohibited by the regulations. Thus, a person does not have to qualify under any of the exceptions to be able to make the following statements. Such statements can be made, however, only by the person indicated and under the circumstances described. These statements should not be used as a point of departure or analogy for determining the permissibility of other types of statements. The Department's view that these statements are not contrary to the prohibitions contained in the antiboycott provisions of the regulations is limited to the specific statement in the specific context indicated.

1. A U.S. person may always provide its own name, address, place of incorporation ("nationality"), and nature of business.

2. A U.S. person may state that it is not on a blacklist, or restricted from doing business in a boycotting country. A company may not make that statement about its subsidiaries or affiliates—only about itself. A U.S. person may not say that there is no reason for it to be blacklisted. To make that statement would provide directly or by implication information that may not be provided. A U.S. person may inquire about the reasons it is blacklisted if it learns that it is on a blacklist (see § 769.2(d) example (xv)).

3. A U.S. person may describe in detail its past dealings with boycotting countries; may state in which boycotting countries its trademarks are registered; and may specify in which boycotting countries it is registered or qualified to do business. In general, a U.S. person is free to furnish any information it wishes about the nature and extent of its commercial dealings with boycotting countries.

4. A U.S. person may state that many U.S. firms or individuals have similar names and that it believes that it may be confused with a similarly named entity. A U.S. person may not state that it does or does not have an affiliation or relationship with such similarly named entity.

5. A U.S. person may state that the information requested is a matter of public record in the United States. However, the person may not direct the inquirer to the location of that information, nor may the U.S. person provide or cause to be provided such information.

B. Availability of the Compliance With Local Law Exception To Establish a Foreign Branch

Section 769.3(f) of the Regulations, the Compliance With Local Law exception, permits U.S. persons, who are bona fide residents of a boycotting country, to take certain limited, but otherwise prohibited, actions, if they are required to do so in order to comply with local law.

Among these actions is the furnishing of non-discriminatory information. Examples (iv) through (vi) under "Examples of Bona Fide Residency" indicate that a company seeking to become a bona fide resident within a boycotting country may take advantage of the exception for the limited purpose of furnishing information required by local law to obtain resident status. Exactly when and how this exception is available has been the subject of a number of inquiries. It is the Department's view that the following conditions must be met for a nonresident company to be permitted to furnish otherwise prohibited information for the limited purpose of seeking to become a bona fide resident:

1. The company must have a legitimate business reason for seeking to establish a branch or other resident operation in the boycotting country. (Removal from the blacklist does not constitute such a reason.)

2. The local operation it seeks to establish must be similar or comparable in nature and operation to ones the company operates in other parts of the world, unless local law or custom dictates a significantly different form.

3. The person who visits the boycotting country to furnish the information must be the official whose responsibility ordinarily includes the creation and registration of foreign operations (i.e., the chairman of the board cannot be flown in to answer boycott questions unless the chairman of the board is the corporate official who ordinarily goes into a country to handle foreign registrations).

4. The information provided must be that which is ordinarily known to the person establishing the foreign branch. Obviously, at the time of establishment, the foreign branch will have no information of its own knowledge. Rather, the information should be that which the responsible person has of his own knowledge, or that he would have with him as incidental and necessary to the registration and establishment process. As a general rule, such information would not include such things as copies of agreements with boycotted country concerns or detailed information about the person's dealings with blacklisted concerns.

5. It is not necessary that documents prepared in compliance with this exception be drafted or executed within the boycotting country. The restrictions on the type of information which may be provided and on who may provide it apply regardless of where the papers are prepared or signed.

[47 FR 52992, Nov. 24, 1982, as amended at 47 FR 57677, Dec. 28, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 6

INTERPRETATION

(a) *Goods of boycotted country origin prohibited.* This term is very common in letters of credit from Kuwait and may also appear from time to time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the regulations (see § 769.2(a) and § 769.3(a-1)). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus this bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does *not* have to report this request because the forwarder has no role or obligation in this part of the transaction. *See* § 769.6, examples (xiii)–(xv).

(b) *No six-pointed stars may be used on the goods, packing or cases.* This term appears from time to time on documents from a variety of countries. The Department has taken the position that the six-pointed star is a religious symbol. *See* § 769.2(b), example (viii). Agreeing to this term is prohibited by the regulations and not excepted because it constitutes an agreement to furnish information about the religion of a U.S. person. *See* § 769.2(c). If a person proceeds with a transaction in which this is a condition at any stage of the transaction, that person has agreed to the condition in violation of the regulations. It is not enough to ignore the condition. Exception must affirmatively be taken to this term or it must be stricken from the documents of the transaction. It is reportable by all parties to the transaction that are restricted by it. For example, unlike the situation described in (a) above, the freight forwarder would have to report this request because his role in the transaction would involve preparation of the packing and cases. The bank and exporter would both have to report, of course, if it were a term in a letter of credit. Each party would be obligated affirmatively to seek an amendment or deletion of the term.

(c) *Neither goods nor packaging shall bear any symbols prohibited in the boycotting country.* This term appears from time to time in letters of credit and shipping documents from Saudi Arabia. In our view, it is neither prohibited, nor reportable because it is not boycott related. There is a wide range of symbols that are prohibited in Saudi Arabia for a variety of reasons, many having to do with that nation's cultural and religious beliefs. On this basis, we do not interpret the term to be boycott related. *See* § 769.2(a)(5) and § 769.6(a)(5)(v).

[48 FR 2118, Jan. 18, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 7

INTERPRETATION

Prohibited Refusal To Do Business

When a boycotting country rejects for boycott-related reasons a shipment of goods sold by a United States person, the United States person selling the goods may return them to its inventory or may re-ship them to other markets (the United States person may *not* return them to the original supplier and demand restitution). The U.S. person may then make a non-boycott based selection of another supplier and provide the goods necessary to meet its obligations to the boycotting customer in that particular transaction without violating § 769.2(a) of the regulations.

If the United States person receives another order from the same boycotting country for similar goods, the Department has determined that a boycott-based refusal by a United States person to ship goods from the supplier whose goods were previously rejected would constitute a prohibited refusal to do business under § 769.2(a) of the antiboycott regulations. The Department will presume that filling such an order with alternative goods is evidence of the persons' refusal to deal with the original supplier.

The Department recognizes the limitations this places on future transactions with a boycotting country once a shjipment of goods has been rejected. Because of this, the Department wishes to point out that, when faced with a boycotting country's refusal to permit entry of the particular goods, a United States person may state its obligation to abide by the requirements of United States law and indicate its readiness to comply with the unilateral and specific selection of goods by the boycotting country in accordance with § 769.3(c) of the antiboycott regulations. That section provides, in pertinent part, as follows:

A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country * * * of * * * specific goods, * * * provided that * * * with respect to goods, the items, the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

The United States person may also provide certain services in advance of the unilateral selection by the boycotting country, such as the compilation of lists of qualified suppliers, so long as such services are customary to the type of business the United States person is engaged in, and the services rendered are completely non-exclusionary in character (i.e., the list of qualified suppliers would have to include the supplier whose goods had previously been rejected by the boycotting country, if they were fully qualified). See § 769.2(a)(6) for a discussion of the requirements for the provision of these services.

The Department wishes to emphasize that the unilateral selection exception in § 769.3(c) will be construed narrowly, and that all its requirements and conditions must be met, including the following:

Discretion for the selection must be exercised by a boycotting country, or by a national or resident of a boycotting country;

The selection must be stated in the affirmative specifying a particular supplier of goods;

While a permissible selection may be boycott based, if the United States person knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin, the person may not comply under any circumstances.

The Department cautions United States persons confronted with the problem or concern over the boycott based rejection of goods shipped to a boycotting country that the adoption of devices such as "risk of loss" clauses, or conditions that make the supplier financially liable if his or her goods are rejected by the boycotting country for boycott reasons are presumed by the Department to be evasion of the statute and regulations, and as such are prohibited by § 769.4 of the antiboycott regulations, unless adopted prior to January 18, 1978. See § 769.4(d).

[48 FR 16238, Apr. 15, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 8

INTERPRETATION

Definition of Interstate of Foreign Commerce of the United States

When United States persons (as defi
by the antiboycott regulations) loc
within the United States purchase or
goods or services located outside the Un
States, they have engaged in an acti
within the foreign commerce of the Uni
States. Although the goods or services
never physically come within the geogra
ic boundaries of the several states or terr
ries of the United States, legal ownership
title is transferred from a foreign nation
the United States person who is located
the United States. In the case of a purcha
subsequent resale would also be wit
United States commerce.

It is the Department's view that the ter
"sale" and "purchase" as used in the regu
tions are not limited to those circumstanc
where the goods or services are physical
transferred to the person who acquires tit
The regulations define the activities th
serve as the transactional basis for U
commerce as those involving the "sale, pu
chase, or transfer" of goods or services.
the Department's view, as used in the ant
boycott regulations, "transfer" conten
plates physical movement of the goods
services between the several states or terr
tories and a foreign country, while "sal
and "purchase" relate to the movement
ownership or title.

This interpretation applies only to thos
circumstances in which the person locate
within the United States buys or sells good
or services for its own account. Where th
United States person is engaged in the bro
kerage of foreign goods, i.e., bringing for
eign buyers and sellers together and assis
ing in the transfer of the goods, the sale or
purchase itself would not ordinarily be con
sidered to be within U.S. commerce. The
brokerage service, however, would be a serv
ice provided from the United states to the
parties and thus an activity within the U.S
commerce and subject to the antiboycott
laws. See § 769.1(d)(13).

The Department cautions that United
States persons who alter their normal pat
tern of dealing to eliminate the passage of
ownership of the goods or services to or
from the several states or territories of the
United States in order to avoid the applica
tion of the antiboycott regulations would be
in violation of § 769.4, the evasion section of
the regulations.

[48 FR 24323, June 1, 1983. Redesignated at
53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 9

INTERPRETATION

Activities Exclusively Within a Boycotting Country—Furnishing Information

Section 769.3(f-1) of the regulations provides that a United States person who is a bona fide resident of a boycotting country may comply with the laws of that country with respect to his or her activities exclusively within the boycotting country. Among the types of conduct permitted by this exception is "furnishing information within the host country" § 769.3(f-1)(1)(v). For purposes of the discussion which follows, the Department is assuming that the person in question is a bona fide resident of the boycotting country as defined in § 769.3(f), and that the information to be provided is required by the laws or regulations of the boycotting country, as also defined at § 769.3(f). The only issue this interpretation addresses is under what circumstances the provision of information is "an activity exclusively within the boycotting country.

The activity of "furnishing information" consists of two parts, the acquisition of the information and its subsequent transmittal. Under the terms of this exception, the information may not be acquired outside the country for the purpose of responding to the requirement for information imposed by the boycotting country. Thus, if an American company which is a bona fide resident of a boycotting country is required to provide information about its dealings with other U.S. firms, the company may not ask its parent corporation in the United States for that information, or make any other inquiry outside the boundaries of the boycotting country. The information must be provided to the boycotting country authorities based on information or knowledge available to the company and its personnel located within the boycotting country at the time the inquiry is received [see § 769.3(f-1) examples (iii), (iv), (v)]. Much of the information in the company's possession (transaction and corporate records) may have actually originated outside the boycotting country, and much of the information known to the employees may have been acquired outside the boycotting country. This will not cause the information to fall outside the coverage of this exception, if the information was sent to the boycotting country or acquired by the individuals in normal commercial context prior to and unrelated to a boycott inquiry or purpose. It should be noted that if prohibited information (about business relations with a boycotted country, for example) has been forwarded to the affiliate in the boycotting country in anticipation of a possible boycott inquiry from the boycotting country government, the Department will not regard this as information within the knowledge of the bona fide resident under the terms of the exception. However, if the bona fide resident possesses the information prior to receipt of a boycott-related inquiry and obtained it in a normal commercial context, the information can be provided pursuant to this exception notwithstanding the fact that, at some point, the information came into the boycotting country from the outside.

The second part of the analysis of "furnishing information" deals with the limitation on the transmittal of the information. It can only be provided within the boundaries of the boycotting country. The bona fide resident may only provide the information to the party that the boycotting country law requires (directly or through an agent or representative within the country) so long as that party is located within the boycotting country. This application of the exception is somewhat easier, since it is relatively simple to determine if the information is to be given to somebody within the country.

Note that in discussing what constitutes furnishing information "exclusively within" the boycotting country, the Department does not address the nature of the transaction or activity that the information relates to. It is the Department's position that the nature of the transaction, including the inception or completion of the transaction, is not material in analyzing the availability of this exception.

For example, if a shipment of goods imported into a boycotting country is held up at the time of entry, and information from the bona fide resident within that country is legally required to free those goods, the fact that the information may relate to a transaction that began outside the boycotting country is not material. The availability of the exception will be judged based on the activity of the bona fide resident within the country. If the resident provides that information of his or her own knowledge, and provides it to appropriate parties located exclusively within the country, the exception permits the information to be furnished.

Factual variations may raise questions about the application of this exception and the effect of this interpretation. In an effort to anticipate some of these, the Department has set forth below a number of questions and answers. They are incorporated as a part of this interpretation.

1. *Q:* Under this exception, can a company which is a U.S. person and a bona fide resident of the boycotting country provide information to the local boycott office?

A: Yes, if local law requires the company to provide this information to the boycott office and all the other requirements are met.

2. *Q:* If the company knows that the local boycott office will forward the information to the Central Boycott Office, may it still provide the information to the local boycott office?

A: Yes, if it is requred by local law to furnish the information to the local boycott office and all the other requirements are met. The company has no control over what happens to the information after it is provided to the proper authorities. (There is obvious potential for evasion here, and the Department will examine such occurrences closely.)

3. *Q:* Can a U.S. person who is a bona fide resident of Syria furnish information to the Central Boycott Office in Damascus?

A: No, unless the law in Syria specifically requires information to be provided to the Central Boycott Office the exception will not apply. Syria has a local boycott office responsible for enforcing the boycott in that country.

4. *Q:* If a company which is a U.S. person and a bona fide resident of the boycotting country has an import shipment held up in customs of the boycotting country, and is required to provide information about the shipment to get it out of customs, may the company do so?

A: Yes, assuming all other requirements are met. The act of furnishing the information is the activity taking place exclusively within the boycott country. The fact that the information is provided corollary to a transaction that originates or terminates outside the boycotting country is not material.

5. *Q:* If the U.S. person and bona fide resident to the boycotting country is shipping goods out of the boycotting country, and is required to certify to customs officials of the country at the time of export that the goods are not of Israeli origin, may he do so even though the certification relates to an export transaction?

A: Yes, assuming all other requirements are met. See number 4 above.

[48 FR 40368, Sept. 7, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT No. 10

INTERPRETATIONS

(a) The words "Persian Gulf" cannot appear on the document. This term is common in letters of credit from Kuwait and may be found in letters of credit from Bahrain. Although more commonly appearing in letters of credit, the term may also appear in other trade documents.

It is the Department's view that this term reflects an historical dispute between the Arabs and the Iranians over geographic place names which in no way relates to existing economic boycotts. Thus, the term is neither prohibited nor reportable under the Regulations.

(b) Certify that goods are of U.S.A. origin and *contain no foreign parts.* This term appears periodically on documents from a number of Arab countries. It is the Department's position that the statement is a positive certification of origin and, as such, falls within the exception contained in § 769.3(b) for compliance with the import and shipping document requirements of a boycotting country. Even though a negative phrase is contained within the positive clause, the phrase is a non-exclusionary, non-blacklisting statement. In the Department's view, the additional phrase does not affect the permissible status of the positive certificate, nor does it make the request reportable (§ 769.6(a)(5)(iii)).

(c) Legalization of documents by any Arab consulate except Egyptian Consulate permitted. This term appears from time to time in letters of credit but also may appear in various other trade documents requiring legalization and thus is not prohibited, and a request to comply with the statement is not reportable. Because a number of Arab states do not have formal diplomatic relations with Egypt, they do not recognize Egyptian embassy actions. The absence of diplomatic relations is the reason for the requirement. In the Department's view this does not constitute an unsanctioned foreign boycott or embargo against Egypt under the terms of the Export Administration Act. Thus the term is not prohibited, and a request to comply with the statement is not reportable.

[48 FR 52291, Nov. 17, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT No. 11

INTERPRETATION

Definition of unsolicited invitation to bid. Section 769.6(a)(4) states in part:

In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.

The regulations do not define "unsolicited" in this context. Based on review of numerous situations, the Department has developed certain criteria that it applies in determining if an invitation to bid or other proposal received by a U.S. person is in fact unsolicited.

1. The invitation is not unsolicited if, during a commercially reasonable period of time preceding the issuance of the invitation, a representative of the U.S. person contacted the company or agency involved for the purpose of promoting business on behalf of the company.

2. The invitation is not unsolicited if the U.S. person has advertised the product or line of products that are the subject of the invitation in periodicals or publications that ordinarily circulate to the country issuing the invitation during a commercially reasonable period of time preceding the issuance of the invitation.

3. The invitation is not unsolicited if the U.S. person has sold the same or similar products to the company or agency issuing the invitation within a commercially reasonable period of time before the issuance of the current invitation.

4. The invitation is not unsolicited if the U.S. person has participated in a trade mission to or trade fair in the country issuing the invitation within a commercially reasonable period of time before the issuance of the invitation.

Under § 769.6(a)(4), the invitation is regarded as not reportable if the U.S. person receiving it does not respond. The Department has determined that a simple acknowledgment of the invitation does not constitute a response for purposes of this rule. However, an acknowledgment that requests inclusion for future invitations will be considered a response, and a report is required.

Where the person in receipt of an invitation containing a boycott term or condition is undecided about a response by the time a report would be required to be filed under the regulations, it is the Department's view that the person must file a report as called for in the regulations. The person filing the report may indicate at the time of filing that he has not made a decision on the boycott request but must file a supplemental report as called for in the regulations at the time a decision is made (§ 769.6(a)(6)).

[48 FR 56364, Dec. 21, 1983; 48 FR 57266, Dec. 29, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 12

APPENDIX—INTERPRETATION

The Department has taken the position that a U.S. person as defined by § 769.1(b) of the antiboycott provisions of the Export Administration Regulations (15 CFR Part 769) (the "Regulations") may not make use of an agent to furnish information that the U.S. person is prohibited from furnishing pursuant to § 769.2(d) of those regulations.

Example (v) under § 769.4 of the regulations (Evasion) provides:

> A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all of Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.
>
> A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

This interpretation deals with the application of the Regulations to a commercial agent registration requirement recently imposed by the government of Saudi Arabia. The requirement provides that nationals of Saudi Arabia seeking to register in Saudi Arabia as commercial agents or representatives of foreign concerns must furnish certain boycott-related information about the foreign concern prior to obtaining approval of the registration. The requirement has been imposed by the Ministry of Commerce of Saudi Arabia, which is the government agency responsible for regulation of commercial agents and foreign commercial registrations. The Ministry requires the agent or representative to state the following:

> Declaration: I, the undersigned, hereby declare, in my capacity as (blank) that (name and address of foreign principal) is not presently on the blacklist of the Office for the Boycott of Israel and that it and all its branches, if any, are bound by the decisions issued by the Boycott Office and do not (1) participate in the capital of, (2) license the manufacture of any products or grant trademarks or tradeware license to, (3) give experience or technical advice to, or (4) have any other relationship with other companies which are prohibited to be dealt with by the boycott office. Signed (name of commercial agent/representative/distributor).

It is the Department's view that under the circumstances specifically outlined in this interpretation relating to the nature of the requirement, a U.S. person will not be held responsible for a violation of the regulations when such statements are provided by its commercial agent or representative, even when such statements are made with the full knowledge of the U.S. person.

Nature of the requirement. For a boycott-related commercial registration requirement to fall within the coverage of this interpretation it must have the following characteristics:

1. The requirement for information imposed by the boycotting country applies to a national or other subject of the boycotting country qualified under the local laws of

that country to function as a commercial representative within that country;

2. The registration requirement relates to the registration of the commercial agent's or representative's authority to sell or distribute goods within the boycotting country acquired from the foreign concern.

3. The requirement is a routine part of the registration process and is not applied selectively based on boycott-related criteria;

4. The requirement applies only to a commercial agent or representative in the boycotting country and does not apply to the foreign concern itself; and

5. The requirement is imposed by the agency of the boycotting country responsible for regulating commercial agencies.

The U.S. person whose agent is complying with the registration requirement continues to be subject to all of the terms of the regulations, and may not provide any prohibited information to the agent for purposes of the agent's compliance with the requirement.

In addition, the authority granted to the commercial agent or representative by the U.S. person must be consistent with standard commercial practices and not involve any grants of authority beyond those incidential to the commercial sales and distributorship responsibilities of the agent.

Because the requirement does not apply to the U.S. person, no reporting obligation under § 769.6 of the regulations would arise.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the Export Administration Regulations, should be read narrowly. Circumstances that differ in any material way from those discussed in this notice will be considered under the applicable provisions of the regulations. Persons are particularly advised not to seek to apply this interpretation to circumstances to which U.S. principals seek to use agents to deal with boycott-related or potential blacklisting situations.

[49 FR 14930, Apr. 16, 1984. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT No. 13

SUMMARY

This interpretation considers boycott-based contractual language dealing with the selection of suppliers and subcontractors.

While this language borrows terms from the "unilateral and specific selection" exception contained in 15 CFR 769.3(c), it fails to meet the requirements of that exception. Compliance with the requirements of the language constitutes a violation of the regulatory prohibition of boycott-based refusals to do business.

REGULATORY BACKGROUND

Section 769.2(a) prohibits U.S. pe from refusing or knowingly agreein refuse to do business with other pe when such refusal is pursuant to an a ment with, requirement of, or request boycotting country. That prohibition not extend to the performance of man ment, procurement or other pre-award ices, however, notwithstanding knowle that the ultimate selection may be boyc based. To be permissible such services Must be customary for the firm or indu involved and (2) must not exclude oth from the transaction or involve other tions based on the boycott. 15 C § 769.2(a)(6), "Refusals to Do Business", ex. (xiii).

A specific exception is also made in regulations for compliance (and agreeme to comply) with a unilateral and specific lection of suppliers or subcontractors b boycotting country buyer. 15 C § 769.3(c). In Supplement No. 1 to the Re lations, the following form of contract language was said to fall within that exc tion for compliance with unilateral and s cific selection:

> The Government of the boycotting cou try (or the First Party), in its exclus power, reserves its right to make the fin unilateral and specific selection of any pr posed carriers, insurers, suppliers of servic to be performed within the boycotting cou try, or of specific goods to be furnished accordance with the terms and conditions this contract.

The Department noted that the actual ste necessary to comply with any selectio made under this agreement would also hav to meet the requirements of § 769.3(c) claim the benefit of that exception. In othe words, the discretion in selecting woul have to be exercised exclusively by the boy cotting country customer and the selectio would have to be stated in the affirmative naming a particular supplier. 15 CFR § 769.3(c)(4)(5).

ANALYSIS OF THE NEW CONTRACTUAL LANGUAGE

The Office of Antiboycott Compliance has learned of the introduction of a new con tractual clause into tender documents issued by boycotting country governments. This clause is, in many respects, similar to that dealt with in Supplement No. 1, but several critical differences exist.

The clause states:

> *Boycott of [Boycotted Country]*
>
> In connection with the performance of this Agreement, Contractor acknowledges that the import and customs laws and regu

lations of [boycotting country] apply to the furnishing and shipment of any products or components thereof to [boycotting country]. The Contractor specifically acknowledges that the aforementioned import and customs laws and regulations of [boycotting country] prohibit, among other things, the importation into [boycotting country] of products or components thereof: (A) Originating in [boycotted country] (B) Manufactured, produced and furnished by companies organized under the laws of [boycotted country] and (C) Manufactured, produced or furnished by Nationals or Residents of [boycotted country].

The Government, in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed Carriers, Insurers, Suppliers of Services to be performed within [boycotting country] or of specific goods to be furnished in accordance with the terms and conditions of this Contract.

To assist the Government in exercising its right under [the preceding paragraph], Contractor further agrees to provide a complete list of names and addresses of all his Sub-Contractors, Suppliers, Vendors and Consultants and any other suppliers of the service for the project.

The title of this clause makes clear that its provisions are intended to be boycott-related. The first paragraph acknowleges the applicability of certain boycott-related requirements of the boycotting country's laws in language reviewed in Supplement No. 1, Part II.B. and found to constitutie a permissible agreement under the exception contained in § 769.3(a-1) for compliance with the import requirements of a boycotting country. The second and third paragraphs together deal with the procedure for selecting subcontractors and suppliers of services and goods and, in the context of the clause as a whole, must be regarded as motivated by boycott considerations and intended to enable the boycotting country government to make boycott-based selections, including the elimination of blacklisted subcontractors and suppliers.

The question is whether the incorporation into these paragraphs of some language from the "unilateral and specific selection" clause approved in Supplement No. 1 suffices to take the language outside § 769.2(a)'s prohibition on boycott-based agreements to refuse to do business. While the first sentence of this clause is consistent with the language discussed in Supplement No. 1, the second sentence significantly alters the effect of this clause. The effect is to draw the contractor into the decision-making process, thereby destroying the unilateral character of the selection by the buyer. By agreeing to submit the names of the suppliers it plans to use, the contractor is agreeing to give the boycotting country buyer, who has retained the right of final selection, the ability to reject, for boycott-related reasons, any supplier the contractor has already chosen. Because the requirement appears in the contractual provision dealing with the boycott, the buyer's rejection of any supplier whose name is given to the buyer pursuant to this provision would be presumed to be boycott-based. By signing the contract, and thereby agreeing to comply with all of its provisions, the contractor must either accept the buyer's rejection of any supplier, which is presumed to be boycott-based because of the context of this provision, or breach the contract. In these circumstances, the contractor's method of choosing its subcontractors and suppliers, in anticipation of the buyer's boycott-based review, cannot be considered a permissible pre-award service because of the presumed intrusion of boycott-based criteria into the selection process. Thus, assuming all other jurisdictional requirements necessary to establish a violation of Part 769 are met, the signing of the contract by the contractor constitutes a violation of § 769.2(a) of the regulations because he is agreeing to refuse to do business for boycott reasons.

The apparent attempt to bring this language within the exception for compliance with unilateral and specific selections is ineffective. The language does not place the discretion to choose suppliers in the hands of the boycotting country buyer but divides this discretion between the buyer and his principal contractor. Knowing that the buyer will not accept a boycotted company as supplier or subcontractor, the contractor is asked to use his discretion in selecting a single supplier or subcontractor for each element of the contract. The boycotting country buyer exercises discretion only through accepting or rejecting the selected supplier or contractor as its boycott policies require. In these circumstances it cannot be said that the buyer is exercising a right of unilateral and specific selection which meets the criteria of § 769.3(c). For this reason, agreement to the contractual language discussed here would constitute an agreement to refuse to do business with any person rejected by the buyer and would violate § 769.2(a).

[50 FR 13188, Apr. 3, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT No. 14

In light of recent actions by the United States against South Africa, there has been uncertainty as to whether foreign boycotts against that country are subject to the antiboycott regulations. This uncertainty creates a burden for U.S. firms attempting to engage in international trade. Accordingly, the Department takes the position that compliance with foreign boycotts against South Africa is not subject to the antiboycott provisions of the Export Administration Regulations.

The antiboycott provisions of the Export Administration Regulations (15 CFR Part 769) apply only to foreign boycotts against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. South Africa is deemed the object of a form of boycott pursuant to United States law within the meaning of the antiboycott provisions of the Export Administration Act. Foreign boycotts against South Africa are, therefore, not regarded as unsanctioned within the meaning of the antiboycott provisions of the Export Administration Regulations. Accordingly, the Department exercises its authority to interpret the Export Administration Regulations as providing that:

(a) Compliance with, furtherance of or support for such boycott is not subject to the antiboycott provisions of the Export Administration Regulations; and

(b) Requests to take any action which has the effect of furthering or supporting such boycotts are not reportable pursuant to those regulations.

[52 FR 17285, May 7, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT No. 15

INTERPRETATION

(a) *Contractual clause concerning import, customs and boycott laws of a boycotting country.* The following language has appeared in tender documents issued by a boycotting country:

> Supplier declares his knowledge of the fact that the import, customs and boycott laws, rules and regulations of [name of boycotting country] apply in importing to [name of boycotting country].
>
> Supplier declares his knowledge of the fact that under these laws, rules and regulations, it is prohibited to import into [name of the boycotting country] any products or parts thereof that originated in [name of boycotted country]; were manufactured, produced or imported by companies formed under the laws of [name of boycotted country]; or were manufactured, produced or imported by nationals or residents of [name of boycotted country].

Agreeing to the above contractual language is a prohibited agreement to refuse to do business, under § 769.2(a). The first paragraph requires broad acknowledgment of the application of the boycotting country's boycott laws, rules and regulations. Unless this language is qualified to apply only to boycott restrictions with which U.S. persons may comply, agreement to it is prohibited. See § 769.2(a), examples (v) and (vi) under "Agreement to Refuse to Do Business."

The second paragraph does not limit the scope of the boycott restrictions referenced in the first paragraph. It states that the boycott laws include restrictions on goods originating in the boycotted country; manufactured, produced or supplied by companies organized under the laws of the boycotted country; or manufactured, produced or supplied by nationals or residents of the boycotted country. Each of these restrictions is within the exception for compliance with the import requirements of the boycotting country (§ 769.3(a-1)). However, the second paragraph's list of restrictions is not exclusive. Since the boycott laws generally include more than what is listed and permissible under the antiboycott law, U.S. persons may not agree to the quoted clause. For example, a country's boycott laws may prohibit imports of goods manufactured by blacklisted firms. Except as provided by § 769.3(f), agreement to and compliance with this boycott restriction would be prohibited under the antiboycott law.

The above contractual language is distinguished from the contract clause determined to be permissible in Supplement 1, Part II, A, by its acknowledgment that the boycott requirements of the boycotting country apply. Although the first sentence of the Supplement 1 clause does not exclude the possible application of boycott laws, it refers only to the import and customs laws of the boycotting country without mentioning the boycott laws as well. As discussed fully in Supplement 1, compliance with or agreement to the clause quoted there is, therefore, permissible.

The contract clause quoted above, as well as the clause dealt with in Supplement 1, Part II, A, is reportable, under § 769.6(a)(1).

(b) *Letter of credit terms removing blacklist certificate requirement if specified vessels used.* The following terms frequently appear on letters of credit covering shipments to Iraq:

> Shipment to be effected by Iraqi State Enterprise for Maritime Transport Vessels or by United Arab Shipping Company (UASC) vessels, if available.
>
> If shipment is effected by any of the above company's [sic] vessels, black list certificate or evidence to that effect is not required.

These terms are not reportable and compliance with them is permissible.

The first sentence, a directive to use Iraqi State Enterprise for Maritime Transport or United Arab Shipping vessels, is neither reportable nor prohibited because it is not considered by the Department to be boycott-related. The apparent reason for the directive is Iraq's preference to have cargo shipped on its own vessels (or, as in the case of United Arab Shipping, on vessels owned by a company in part established and owned by the Iraqi government). Such "cargo preference" requirements, calling for the use of an importing or exporting country's own ships, are common throughout the world and are imposed for non-boycott reasons. (See § 769.2(a) example (vii), AGREEMENTS TO REFUSE TO DO BUSINESS.)

In contrast, if the letter of credit contains a list of vessels or carriers that appears to constitute a boycott-related whitelist, a directive to select a vessel from that list would be both reportable and prohibited. Where such a directive appears in conjunction with a term removing the blacklist certificate requirement if these vessels are used, the Department will presume that beneficiaries, banks and any other U.S. person receiving the letter of credit know that there is a boycott-related purpose for the directive.

The second sentence of the letter of credit language quoted above does not, by itself, call for a blacklist certificate and is not, therefore, reportable. If a term elsewhere on the letter of credit imposes a blacklist certificate requirement, then that other term would be reportable.

(c) *Information not related to a particular transaction in U.S. commerce.* Under § 769.2 (c), (d) and (e), U.S. persons are prohibited, with respect to their activities in U.S. commerce, from furnishing certain information. It is the Department's position that the required nexus with U.S. commerce is established where the furnishing of information itself occurs in U.S. commerce. Even where the furnishing of information is not itself in U.S. commerce, however, the necessary relationship to U.S. commerce will be established if the furnishing of information relates to particular transactions in U.S. commerce or to anticipated transactions in U.S. commerce. See, e.g., § 769.2(d), examples (vii), (ix) and (xii).

The simplest situation occurs where a U.S. person located in the United States furnishes information to a boycotted country. The transfer of information from the United States to a foreign country is itself an activity in U.S. commerce. See § 769.1(d)(1)(iv). In some circumstances, the furnishing of information by a U.S. person located outside the United States may also be an activity in U.S. commerce. For example, the controlled foreign subsidiary of a domestic concern might furnish to a boycotting country information the subsidiary obtained from the U.S.-located parent for that purpose. The subsidiary's furnishing would, in these circumstances, constitute an activity in U.S. commerce. See § 769.1(d)(9).

Where the furnishing of information is not itself in U.S. commerce, the U.S. commerce requirement may be satisfied by the fact that the furnishing is related to an activity in U.S. foreign or domestic commerce. For example, if a shipment of goods by a controlled-in-fact foreign subsidiary of a U.S. company to a boycotting country gives rise to an inquiry from the boycotting country concerning the subsidiary's relationship with another firm, the Department regards any responsive furnishing of information by the subsidiary as related to the shipment giving rise to the inquiry. If the shipment is in U.S. foreign or domestic commerce, as defined by the regulations, then the Department regards the furnishing to be related to an activity in U.S. commerce and subject to the antiboycott regulations, whether or not the furnishing itself is in U.S. Commerce.

In some circumstances, the Department may regard a furnishing of information as related to a broader category of present and prospective transactions. For example, if a controlled-in-fact foreign subsidiary of a U.S. company is requested to furnish information about its commercial dealings and it appears that failure to respond will result in its blacklisting, any responsive furnishing of information will be regarded by the Department as relating to all of the subsidiary's present and anticipated business activities with the inquiring boycotting country. Accordingly, if any of these present or anticipated business activities are in U.S. commerce, the Department will regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

In deciding whether anticipated business activities will be in U.S. commerce, the Department will consider all of the surrounding circumstances. Particular attention will be given to the history of the U.S. person's business activities with the boycotting country and others, the nature of any activities occurring after a furnishing of information occurs and any relevant economic or commercial factors which may affect these activities.

For example, if a U.S. person has no activities with the boycotting country at present but all of its other international activities are in U.S. commerce, as defined by the regulations, then the Department is likely to regard any furnishing of information by that person for the purpose of securing entry into the boycotting country's market as relating to anticipated activities in U.S. commerce and subject to the antiboycott regulations. Similarly, if subsequent to the furnishing of information to the boycotting country for the purpose of securing entry into its markets, the U.S. person engages in transactions with that country which are in U.S. commerce, the Department is likely to regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

(Approved by the Office of Management and Budget under control number 0694-0012)

[54 FR 41440, Oct. 10, 1989]

SUPPLEMENT NO. 16

INTERPRETATION

Sections 769.2 (c), (d), and (e) of the Export Administration Regulations (EAR) prohibit United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of § 769.2 (c), (d), and (e). Throughout this interpretation, "transmission" is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the tansmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§ 769.2(c)), deal explicitly with transmitting information. These examples (§ 769.2(c), example (v), and § 769.3(e), example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibi transmitting it is also permissible. These amples concern information that may furnished by individuals about themse or their families. The examples show t employers may transmit to a boycott country visa applications or forms conta ing information about an employee's r religion, sex, or national origin if that e ployee is the source of the information a authorizes its transmission. In other wor within the limits of ministerial action s forth in these examples, employers' actio in transmitting information are protect by the exception available to the employe The distinction between permissible a prohibited behavior rests not on the defi tional distinction between furnishing a transmitting, but on the excepted nature o the information furnished by the employe The information originating from the e ployee does not lose its excepted characte because it is transmitted by the employer.

The Department's position regarding th furnishing and transmission of certificate of one's own blacklist status rests on a sim lar basis and does not support the conten tion that third parties may transmit prohib ited information authored by another. Suc self-certifications do not violate any prohib tions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); § 769.2(f), example (xiv)). It is the Department's position that i is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist status, the act of transmitting that information would be prohibited.

A third example in the EAR (§ 769.6, example (xiv)), which also concerns a permiss ble transmission of boycott-related informa tion, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in § 769.6 of the EAR—not the prohibitions—and merely illustrates that a person who receives and tramsmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the regulations.

[55 FR 39265, Sept. 26, 1990]

PART 770—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

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SUPPLEMENT NO. 1—COUNTRY GROUPS
SUPPLEMENT NO. 2—U.S. MUNITIONS LIST
SUPPLEMENT NO. 3—NUCLEAR EQUIPMENT AND MATERIAL UNDER NRC LICENSING AUTHORITY

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 370 was redesignated as Part 770 at 53 FR 37751, Sept. 28, 1988.

§ 770.1 General policy.

(a) *Purposes for controls over exports.* Export controls administered by the U.S. Department of Commerce under the Export Administration Act, are used to the extent necessary:

(1) To protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand;

(2) To further significantly the foreign policy of the United States and to fulfill its international responsibilities; and

(3) To exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(b) *Continuing review of commodity controls.* (1) In accordance with provisions of the Export Administration Act of 1979, the Department of Commerce reviews the Commodity Control List (CCL) at least once every 3 years in the case of multilateral controls, and annually in the case of all other controls. This review is necessary to assure that validated export licenses are required for the purposes cited in § 770.1(a). Particular emphasis is placed in the Act on the review of commodities controlled for national security reasons. In this connection, commodities presently under validated license control for national security purposes are reviewed to determine whether such control is still warranted, and commodities that may be exported under general license to most destinations are examined to ascertain whether national security validated license controls should be extended to additional Country Groups. The review ensures that necessary revisions of the CCL are issued promptly.

(2) U.S. Government recommendations that particular commodities be included in the CCL are based on the technical expertise and justifications provided by Technical Task Groups (TTG's), composed of technical representatives of various government agencies. The TTG's in turn, depend on input from various sources, including the Technical Advisory Committees (TAC's) of the Department of Commerce. The TAC's welcome written and oral commodity review recommendations from government agencies, exporters and other interested parties.

(3) The following factors are usually considered during review of any commodity:

(i) Its essential features (distinguishing physical or operating characteristics; variations between types, models, grade, etc.; and the technical and strategic significances of these differences);

(ii) Its civilian uses;

(iii) Its military or military-support uses;

(iv) Its end-use pattern in the United States;

(v) Its technological state of development (whether it involves a new product and represents the current state-of-the-art; whether it contains advanced technology that can feasibly be extracted);

(vi) Its availability abroad (whether the same or a comparable commodity is available from other non-Communist countries, and where and by whom; whether the foreign product is manufactured abroad with U.S.-origin technology or components).

(4) Recommendations submitted to TAC's should, if possible, describe the commodity, identify the commodity by Export Control Commodity Number and provide information regarding uses (military or military-suppo civilian) and foreign availability i ficient detail to permit thorough uation in accordance with the lines set forth above. All comm recommendations, and requests oral presentations should be addr to Director, Office of Technolog Policy Analysis, U.S. Departmen Commerce, P.O. Box 273, Washin DC 20044. Brochures or other li ture pertaining to the productio availability abroad of a compa commodity will prove most helpfu

(c) *Restrictive trade practices or cotts.* The United States oppose strictive trade practices or boy fostered or imposed by foreign c tries against other countries frie to the United States. (See Part 769

(d) *End-use.* Where commodities licensed for export on the basis of specific end-use, applications will considered for approval only if t conform to appropriate end-uses.

(e) *Commodity advisory panels committees.* Commodity advis panels and committees will be cons ed regarding problems arising in administration of export licens policy. (See § 790.1.)

(f) *Foreign government recomm dations.* The Department of Co merce reserves the right in all respe to determine to what extent any r ommendations made by foreign g ernments should be followed.

[43 FR 58544, Dec. 15, 1978, as amended 45 FR 59300, Sept. 9, 1980; 46 FR 29 June 2, 1981; 50 FR 48746, Nov. 27, 1985. designated at 53 FR 37751, Sept. 28, 1988]

§ 770.2 Definitions of terms.

The following are definitions terms as used in the Export Admini tration regulations;

Airline. Any person or firm engage primarily in the transport of perso or property by aircraft for compens tion or hire, pursuant to authorizatio by the U.S. Government or a forei government.

Amendment. An authorization b the Office of Export Licensing revisin the terms set forth on a validated export license.

Bill of lading. The contract of car riage and receipt for commodities technical data issued by the carrier. It includes an air waybill, but does not include an inland bill of lading or a domestic air waybill covering movement to port only.

Canadian airline. Any citizen of Canada who is authorized by the Canadian Government to engage as an airline. For purposes of this definition, a Canadian citizen is:

(i) An individual who is a citizen of Canada; or

(ii) A partnership of which each member is such an individual; or

(iii) A Canadian company incorporated under the laws of Canada or any province having a total foreign stock interest not greater than 40 percent and having the Chairman or Acting Chairman and at least two-thirds of the Directors thereof Canadian citizens.[1]

COCOM (Coordinating Committee). A multilateral organization that cooperates in restricting strategic exports to controlled countries. It consists of 17 member nations: Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States.

Commodity. Any article, material, or supply except technical data.

Commodity Control List (CCL). The list of commodities under the export control jurisdiction of the Bureau of Export Administration, U.S. Department of Commerce.

Controlled country. Any country described in section 620(f) of the Foreign Assistance Act of 1961.

Country groups. For export control purposes, foreign countries are separated into seven country groups designated by the symbols Q, S, T, V, W, Y and Z. Canada is not included in any country group and is referred to by name. (See Supplement No. 1 to Part 770 for a list of countries in each Country Group.)

Customs officer. The customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

Department of Commerce. Specifically includes the Bureau of Export Administration and the International Trade Administration.

Distribution License (§ 773.3). A special license authorizing export of eligible commodities to approved consignees in specified countries, without dollar value or quantity limits. The consignees must be foreign distributors or users of the licensed commodity.

Export Administration Act. Export Administration Act of 1979, effective October 1, 1979.

Export Administration regulations. Regulations set forth in Parts 768 to 799, inclusive, of Title 15 of the Code of Federal Regulations.

Export Control Commodity Numbers. The commodity classification numbers used in Supplement No. 1 to § 799.1 of the Export Administration Regulations. The Export Control Commodity Number consists of a four-digit number followed by a code letter. The four-digit number corresponds to the international COCOM export control structure format. The code letter is the key to documentation requirements and indicates the country group level of control for CCL entries.

Export control document. A validated export license; application for export license; request for authorization to reexport; any and all documents submitted in accordance with the requirements of the export Administration Regulations in support of, or in relation to, an export license application or a request for reexport authorization; application for International Import Certificate; International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration presented in connection with shipments to any country including Canada; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the Export Administration Regulations; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of Part 769; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T. & E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of an export license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States of any commodity or technical data requiring an export license, or the reexport of any such commodity or technical data.

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[1] The substance of this definition of "Citizen of Canada" is also set forth in the regulations and/or policy of the Canadian Air Transport Board.

Exporting carrier. Any instrumentality of water, land, or air transportation by which an export is effected, including any domestic air carrier on which any cargo for export is laden or carried.

Forwarding agent. The person authorized by a named exporter to perform for that exporter actual services which facilitate the export of commodities or technical data. The forwarding agent need not be a person regularly engaged in the freight forwarding business. He shall be designated by the exporter in writing in the power-of-attorney set forth on the Declaration or in a general power-of-attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

General license. A license established by the U.S. Department of Commerce for which no application is required and for which no document is granted or issued. It is available for use by all persons, except those listed in and prohibited by the provisions of Supplement No. 1 to Part 788, and permits export within the provisions thereof as prescribed in the Export Administration Regulations. These general licenses are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Individual license. Any validated license, other than the special licenses listed below, authorizing the export of specific technical data or a specified quantity of commodities during a spe ified period to a designated consigne

Law or regulation relating to expo control. An statute, proclamation, e ecutive order, regulation, rule, licens or order applicable to any conduct i volving an export transaction shall b deemed to be a "law or regulation r lating to export control."

License application; application fo license. License application and simila wording mean an application for validated export license.

Licensee. The person named in th export control document as exporter.

Net Value.[2] The actual selling pri less shipping charges or curren market price, whichever is the large to the same type of purchaser in th United States.

Office of Export Enforcement. Purs ant to the Export Administration Ac of 1979 (Pub. L. 96-72), the Office o Export Enforcement enforces th Export Administration Act and th Regulations thereunder and amon other things, directs the investigatio of suspected export control violation and prepares cases on violations for referral for administrative proceeding by the Department of Commerce and criminal prosecution by the Department of Justice.

Person or firm. An individual, corporation, partnership, association, company, or any other kind of organization, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof, as well as a citizen or national of the United States or any foreign country.

Port of Export. The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

Production facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission regulations, production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source ma terial or special nuclear material, the separation of isotopes or the chemical reprocessing or irradiated source or special nuclear material.

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[2] See § 771.5(b)(1) for definition of "Net Value" when shipment is made under General License *GLV*.

Project License (§ 773.2) A special license authorizing the export of commodities (and technical data where specified) required for a specified activity during a period of approximately one year from the issuance of the license.

Purchaser. The person abroad who has entered into the export transaction with the applicant (licensee) or order party to purchase the commodities or technical data for delivery to the ultimate consignee.

Reexport. The term "reexport" in the Export Administration Regulations, or any license, order, or export control document issued thereunder, includes reexport, transshipment, or diversion of commodities or technical data from one foreign destination to another.

Schedule B numbers. The 7-digit commodity description numbers appearing in the 1978 edition of the Bureau of the Census publication, Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, and amendments thereto.

Service supply license (§ 773.7). A special license enabling persons or firms in the United States and abroad to provide prompt service for equipment (i) exported from the United states, (ii) produced abroad by a subsidiary, affiliate, or branch of a U.S. firm, or (iii) produced abroad by a manufacturer who uses parts imported from the United States in the manufactured product.

Shipper's export declaration. Any declaration required under regulations of the Department of Commerce and other U.S. Government departments or agencies in connection with exports.

Single shipment. All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner shall be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

U.S. exporter. That person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the commodities and technical data out of the United States.

United States. Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A-81U, and also including the Outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

United States airline. Any citizen of the United States who is authorized by the U.S. Government to engage as an airline. For purposes of this definition, a U.S. citizen is:

(i) An individual who is a citizen of the United States or one of its possessions; or

(ii) A partnership of which each member is such an individual; or

(iii) A corporation or association created or organized under the laws of the United States, or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers thereof are such individuals and in which at least 75 per cent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.[3]

Utilization facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission regulations, utilization facility means any nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor: Pressure vessels designed to contain the core of a nuclear reactor; Primary coolant pumps; Fuel charging or discharging machines; and Control rods.

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[3] This definition of "citizen of the United States" is also set forth in Title I, Section 101(13) of the Federal Aviation Act of 1958, as amended, Pub. L. 85-726, 72 Stat. 737 (49 U.S.C. 1301 *et seq.*).

A utilization facility does not include the steam turbine generator portion of a nuclear power plant.

Validated license. A document issued by or under the authority of the Bureau of Export Administration, authorizing export.

[43 FR 58544, Dec. 15, 1978, as amended at 44 FR 59229, Oct. 15, 1979; 45 FR 59300, Sept. 9, 1980; 45 FR 65206, Oct. 2, 1980; 45 FR 84027, Dec. 22, 1980; 46 FR 38349, July 27, 1981; 47 FR 57677, Dec. 28, 1982; 48 FR 53064, Nov. 23, 1983; 50 FR 48746, Nov. 27, 1985; 51 FR 12841, Apr. 16, 1986; 51 FR 18774, May 22, 1986; 51 FR 28693, Aug. 11, 1986; 51 FR 46852, Dec. 29, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055, Mar. 30, 1989; 54 FR 21937, May 22, 1989; 55 FR 40824, Oct. 5, 1990]

§ 770.3 Prohibited exports.

(a) *General provisions.* Subject to the provisions of §§ 770.4, 770.5, and 770.6, the export from the United States of all commodities, and all technical data as defined in § 379.1, is hereby prohibited unless and until a general license authorizing such export shall have been established or a validated license or other authorization for such export shall have been granted by the Office of Export Licensing, except:

(1) Any export to Canada, for consumption in Canada.[4] However, the following do require a validated license to Canada.

(i) The types of technical data described in § 779.4(c);

(ii) Helium, isotopically enriched in the helium-3 isotope in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device, as described on the Commodity Control List under ECCN 4721B;

(iii) Electronic, mechanical, or other devices, as described in § 776.13(c) and the Commodity Control List under ECCN 4517B, primarily useful for surreptitious interception of wire c communications;

(iv) Certain commodities subj Short Supply validated licensin trols, including horses for expo sea, as set forth in Supplemen Part 777;

(v) Communications counter ures equipment (electronic, mec cal, optical, or other) as describ ECCN 4516B, capable of dete monitoring, locating, or jamming reptitious intercepting devices; an

(vi) Mandrels and bellows for dies; certain valves; plants speciall signed for the production of ura hexafluoride, including uranium h fluoride purification equipment; u um hexafluoride mass spectrome inverters, converters, frequency ch ers, and generators having a m phase electrical power output wi the range of 600 to 2,000 hertz; and lindrical tubing, rings and discs (Th commodities are identified on Commodity Control List under EC 4094B, 3131A, 3336A, 4530B, 45 4675B, 4676B and 4677B.);

(2) Exports for the offical use of consumption by the U.S. Ar Forces when shipped by or consig to any branch thereof under a U Government Bill of Lading or a U Government space charter or means of a U.S. Government-owned Government-chartered carrier; and

(3) Exports of commodities and tec nical data controlled by another U. Government agency (see § 770.10).

(b) *Revocation of export licenses a other authorizations.* All export l censes and other authorizations f export or reexport are subject to rev sion, suspension, or revocation, i whole or in part, without notice. I may be necessary for the Office o Export Licensing to stop a shipmen or an export transaction at any stag of its progress; e.g., in order to preven an unauthorized export or reexport. I a shipment is already en route, it may be further necessary to order the return or unloading of such shipment at any port of call in accordance with the provisions of § 786.9.

[43 FR 58544, Dec. 15, 1978, as amended a 44 FR 17988, Mar. 23, 1979; 46 FR 868, Jan 5, 1981; 47 FR 57678, Dec. 28, 1982; 51 FR

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[4] See § 786.1(d) for shipments to Canada, not intended for consumption in Canada, and regarding the requirement of a Shipper's Export Declaration for certain exports to Canada.

12839, Apr. 16, 1986; 53 FR 12668, Apr. 15, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 770.4 Shipments to territories, dependencies, and possessions of the United States, and to Trust Territories.

No license is required for shipments from the United States to the Commonwealth of Puerto Rico or the commonwealth of the Northern Mariana Islands (which does not include Guam, an island possession of the United States), or any territory, dependency, or possession of the United States as listed in *Schedule C-E, Classification of Country and Territory Designations for U.S. Export Statistics,* issued by the Bureau of the Census. Nor is a license required for shipments to the Trust Territory of the Pacific Islands (i.e. Palau).

[52 FR 28543, July 31, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 770.5 Intransit shipments without unloading.

Commodities or technical data shipped on board a vessel or aircraft and passing through the United States in transit from one foreign country to another may be exported without a license from the Office of Export Licensing provided that:

(a) While passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, *and*

(b) They are not originally manifested to the United States.

[54 FR 40861, Oct. 4, 1989]

§ 770.6 Shipments entering foreign trade zones.

Shipments of commodities or technical data of foreign origin for which no customs entry has been made and that enter a U.S. foreign trade zone may be exported from the foreign trade zone without a validated export license except as described below.

NOTE: Commodities originating in the United States and located in a foreign trade zone are subject to U.S. export control requirements. Those commodities otherwise considered to be of foreign origin that, as a result of processing, manufacturing, or assembly while in a U.S. foreign trade zone, have been so altered that they have either been substantially enhanced in value or have lost their original identity with respect to form, are no longer deemed to be of foreign origin. they are, therefore, subject to U.S. export licensing requirements when exported from the foreign trade zone.

(a) *Country restrictions*—(1) *Country Group W, Y, or Z.* Shipments to Country Group W, Y, or Z (see supplement No. 1 to Part 770 for list of countries in each Country Group) require a validated license if a shipment of similar commodities or technical data of U.S. origin could not be made from the customs territory of the United States to such a destination under the provisions of a general license.

(2) *Country Group Q or the People's Republic of China.* Shipments to Country Group Q or the People's Republic of China require a validated license:

(i) If the shipment consists of commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1), or

(ii) If the shipment consists of technical data of a type that may not be exported from the customs territory of the United States to the named destination under the provisions of a general license.

(b) *Shipments covered by International Import Certificates.* Commodities shipped to the United States under an International Import Certificate, Form DIB-645P, in accordance with the procedure described in § 768.2, require a validated license.

(c) *Shipments originating in Canada.* Shipments of commodities originating in Canada require a validated license only when:

(1) The shipment meets the condition set forth in § 771.4(b)(1); or

(2) The shipment cannot be exported directly from the United States to Country Group T under the provisions of General License *G-DEST.*

(d) [Reserved]

(e) *Commodities under short supply controls.* A shipment of any commodity listed in a Supplement to Part 777 as under short supply control requires a validated license if the shipment could not be made from the customs territory of the United States to the intended destination under the provisions of a general license.

[43 FR 58544, Dec. 15, 1978, as amended at 46 FR 38349, July 27, 1981; 46 FR 62837, Dec. 29, 1981; 48 FR 53064, Nov. 23, 1983; 52 FR 31754, Aug. 24, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 770.7 Unauthorized disposition of foreign excess personal property purchased from U.S. Armed Forces in foreign countries.

(a) *General.* In the event the U.S. Armed Forces shall sell in any foreign country any commodity, in used or new condition, that was exported from the United States pursuant to § 770.3(a)(2), the prohibitions and sanctions provided in Parts 787 and 788 shall apply whenever such commodity is, or is attempted to be, transshipped, diverted, or reexported to any destination contrary to the provisions of the contract of sale executed by the U.S. Armed Forces or to the Export Administration regulations referred to therein.

(b) *Applicability.* The provisions of this section shall apply to any person who directly or indirectly participates in, or has an interest in, any transaction involving commodities sold by the U.S. Armed Forces in any foreign country. Sanctions may include denial of participation in Armed Forces foreign excess personal property disposals, as well as denial of U.S. export privileges.

(c) *Enforcement.* By arrangement with the Department of Defense, in enforcing the provisions of this section, the Office of Export Enforcement will apply the prohibitions and sanctions of Parts 787 and 788 to:

(1) Cases involving any commodity of U.S. origin that is, or is attempted to be, transshipped, diverted, or reexported to Country Group Z; and

(2) Cases involving generally, but not exclusively, any commodity identified by the code letter "A," "B," or "M" following the Export control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1) that is, or is attempted to be, transshipped, diverted, or reexported to Country Group Y.

[43 FR 58544, Dec. 15, 1978, as amended at 46 FR 38349, July 27, 1981; 46 FR 62837, Dec. 29, 1981; 48 FR 17582, Apr. 25, 19 Redesignated at 53 FR 37751, Sept. 2 1988]

§ 770.8 [Reserved]

§ 770.9 Shipments that transit country group Y or Z en route to any other destination.[5]

The export from the United States of commodities or technical data to be unladen from a vessel or aircraft in Country Group Y or Z, or to move in transit through Country Group Y or Z en route to Canada or a destination in Country Group Q, S, T, V, or W, is hereby prohibited unless a validated license specifically authorizes the transshipment of intransit shipment or both except an export of technical data or a commodity not identified by the code letter "A", "B", or "M" following the Export Control Commodity Number on the Commodity Control List, to any destination not in Country Group Y or Z, provided that the shipment is exportable under a general license directly from the United States to the country of transit or unlading in Country Group Y or Z. (Transshipment authority does not relieve any person from complying with foreign laws. See § 774.9 of this subchapter.)

[55 FR 40826, Oct. 5, 1990]

§ 770.10 Exports which are not controlled by the Bureau of Export Administration.

(a) *U.S. Munitions List.* Regulations administered by the Office of Munitions Control, U.S. Department of State, Washington, DC 20520, govern the export of defense articles and defense services on the U.S. Munitions List. These regulations are issued under the authority of section 38 of the Arms Export Control Act (22 U.S.C. 2778). The commodities covered by these regulations are listed in Supplement No. 2 to this Part 770.

(b)-(c) [Reserved]

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[5] See § 772.8(b) of this subchapter with respect to filing applications for validated licenses to export commodities that will be unladen from a vessel or aircraft in Country Group Y or Z en route to a destination in any other country group.

(d) *Narcotics and dangerous drugs.* Regulations administered by the Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, govern the export of the following narcotic and non-narcotic substances. The five Schedules of Controlled Substances are summarized as follows: (For complete listing contact Drug Enforcement Administration.)

SCHEDULE I SUBSTANCES

Drugs in this schedule are those that have no accepted medical use in the United States and have a high abuse potential. Some examples are Heroin, Marijuana, LSD, Peyote, Mescaline, Psilocybin, Tetrahydrocannabinols, Ketobemidone, Levomoramide, Racemoramide, Benzylmorphine, Dihydromorphine, Morphine methylsulfonate, Nicocodeine, Nicomorphine, and others.

SCHEDULE II SUBSTANCES

The drugs in this schedule have a high abuse potential with severe psychic or physical dependence liability. Schedule II controlled substances consist of certain narcotic drugs, and drugs containing amphetamines or methamphetamines as the single active ingredient, or in combination with each other. Examples of Schedule II controlled substances are: opium, morphine, codeine hydromorphone (Dilaudid), methadone (Dolophine), Pantopon, Meperdine (Demerol), Cocaine, Oxycodone (Percodan), Anileridine (Leritine), Oxymorphone (Numorphan); and straight Amphetamines and Methamphetamines. Also in Schedule II are Phenmetrazine (Preludin), Methylphenidate (Ritalin), Amobarbital, Pentobarbital, Secobarbital, Phencyclidine, and Methaqualone.

SCHEDULE III SUBSTANCES

The drugs in this schedule have an abuse potential less than those in Schedules I and II, and include compounds containing limited quantities of certain narcotic drugs, and non-narcotic drugs such as: derivatives of barbituric acid except those that are listed in another Schedule, Glutethimide (Doriden), Methyprylon (Noludar), Chlorhexadol, Sulfondiethylmethane, Sulfonmethane, Nalorphine, Benzphetamine, Chlorphentermine, Clortermine, Mazindol, Phendimetrazine. Paregoric is in this Schedule.

SCHEDULE IV SUBSTANCES

The drugs in this schedule have an abuse potential less than those listed in Schedule III and include such drugs as: Barbital, Phenobarbital, Methylphenobarbital, Chloral Betaine (Beta Chlor), Chloral Hydrate, Ethchlorvynol (Placidyl), Ethinamate (Valmid), Meprobamate (Equanil, Miltown), Paraldehyde, Pentaerythritol Chloral (Petrichloral), Methohexital, Fenfluramine, Diethylpropion, and Phentermine.

SCHEDULE V SUBSTANCES

The drugs in this schedule have an abuse potential less than those listed in Schedule IV and consist of preparations containing moderate, limited quantities of certain narcotic drugs generally for antitussive and antidiarrheal purposes, which may be distributed without a prescription order.

(All of these substances must be properly identified with regard to Schedule classification, etc., in accordance with the *"Regulations"* of the Drug Enforcement Administration.)

The regulations are issued under Title III, the Controlled Substances Import and Export Act [84 Stat. 1236; 21 U.S.C. 951-966 (1970)]

(e) *Commodities subject to Atomic Energy Act.* Regulations administered by the U.S. Nuclear Regulatory Commission, Washington, DC 20555, or the U.S. Department of Energy, Washington, DC 20545, govern the export of nuclear equipment and materials. These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended. The commodities covered by these regulations are listed in Supplement No. 3 to Part 770.

(f) *Watercraft.* Regulations administered by the Departments listed below govern the export of watercraft.

(1) *Export authorization by U.S. Department of State.* Vessels of war, as defined in the U.S. Munition List, require export authorization from the Office of Munitions Control, U.S. Department of State, Washington, DC 20520.

(2) *Export authorization by U.S. Maritime Administration and the Bureau of Export Administration.* All watercraft of 5 net tons or more documented (or last documented) by means of registration with the U.S. Coast Guard require export authorization from the U.S. Marine Administration, Washington, DC 20235. Such vessels also require export authorization from the Bureau of Export Administration if intended for export (i) to a destination in Country Groups S or Z, or (ii) to any other destination, except Canada, if it is less than 3,000 gross

tons and is covered by Commodity Control List (CCL) entry No. 1416.

NOTE: Approval of the Maritime Administration also is required for a transfer to a person who is not a citizen of the United States of any interest in a vessel documented (or last documented) by means of registration with the U.S. Coast Guard. Transfer of an "interest" includes the sale, mortgage, charter or lease of such vessels by United States citizens.

(3) *Export authorization by the Bureau of Export Administration.* All watercraft not covered by the provisions of paragraphs (f) (1) and (2) of this section require export authorization only from the Bureau of Export Administration. Such watercraft require a validated license to export to all destinations, except Canada, if covered by CCL entry No. 1416. Otherwise the watercraft is included in CCL entry No. 6499 and a validated license is required only for export to Country Groups S or Z or for export to the Republic of South Africa or Namibia if intended for delivery to or for use by or for military or policy entities in these destinations.

(g) *Natural gas and electric energy.* Regulations administered by the U.S. Department of Energy, Washington, DC 20545, govern the export of "natural gas" and "electric power," as defined in the Acts cited below, and the construction, operation, maintenance, or connection of facilities for such export at the United States side of international boundaries. The regulations relating to "natural gas" are issued under the authority of the Natural Gas Act of 1938, 52 Stat. 822. The regulations relating to "electric power" are issued under the authority of the Federal Power Act, 49 Stat. 847.

(h) *Tobacco seeds and plants.* Regulations administered by the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20426, govern the export of any tobacco seed and/or live tobacco plants subject to the Tobacco Seed and Plant Exportation Act of June 5, 1940, 54 Stat. 231 (7 U.S.C. 516-517). The regulations are issued under the authority of the above-cited Act.

(i) *Endangered fish and wildlife, migratory birds, and bald and golden eagles.* Regulations administere
the U.S. Fish and Wildlife Se
U.S. Department of the Inte
Washington, DC 20240, govern
export of endangered fish and wil
migratory birds and bald and go
eagles or any part, product, egg or
spring thereof or the dead body
parts thereof, whether or not inclu
in a manufactured product. These
ulations are issued under authorit
the Endangered Species Act of
(16 U.S.C. 1531-1543), the Migra
Bird Treaty Act, as amended
U.S.C. 703-711) and the Act for
Protection of Bald and Golden Eag
as amended (16 U.S.C. 668).

(j) *Patent applications.* Regulati
issued by the Patent and Tradem
Office in 37 CFR Part 5 govern
export to a foreign country of uncl
sified technical data in the form o
patent application or an amendme
modification, or supplement thereto
division thereof. These regulations
issued under the authority of
U.S.C. 6, 181-188.

[43 FR 58544, Dec. 15, 1978, as amended
44 FR 12405, Mar. 7, 1979; 45 FR 50556, J
30, 1980; 50 FR 15868, Apr. 22, 1985; 51 F
12839, Apr. 16, 1986. Redesignated at 53 F
37751, Sept. 28, 1988 and amended at 54 F
13055, Mar. 30, 1989]

§ 770.11 Information to exporters.

(a) *Request for status informatio*[8]
To minimize the administrative impa
of export controls on U.S. busine
firms and to enable exporters to c
ordinate their business activities wi
the export control policies of the U.S
Department of Commerce, the Offic
of Export Licensing will undertake
inform exporters of the reasons th
may subject an export license applic
tion to lengthy examination or denia
At the request of an exporter, th
Office of Export Licensing will under
take to provide such information
the extent consistent with the natio
al security and foreign policy of th
United States, and the confidentiality
provisions of the Export Administra
tion Acts of 1969 and 1979. Reque

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[8] See § 772.4 (h) for procedures to expedi
processing of an export license applicati
in an emergency situation.

for this information should be held to a minimum, however, so as not to impede the normal processing of cases and thereby interfere with the effective administration of export control.

(1) *Considerations that may occasion lengthy examination.* Listed below are the most frequent reasons for delay or lengthy examination. Exporters are urged to submit with their applications any evidence or information, including brochures and technical literature, pertinent to these considerations.

(i) Determination as to whether a comparable commodity or comparable technical data is produced abroad and is available to the proposed destination from Free World sources.

(ii) Determination as to the potential strategic uses of a commodity or technical data. Frequently, this involves consultation with technicians in other government agencies and in industry.

(iii) Because of the potential uses of a commodity or technical data in a manner that is of concern to the U.S. Government for national security or foreign policy reasons, the Office of Export Licensing must:

(A) Attempt to verify, through government channels, the end-use stated in an application and/or supporting documents to assure that it is a reliable indication of the future use of the commodity or technical data;

(B) Seek additional information, through government channels, as to the range of activities engaged in by a prospective enduser; and/or

(C) Consult other U.S. Government agencies to obtain their views as to whether approval would be detrimental to the national security.

(iv) Because of the strategic nature of certain commodities and technical data, the United States and other Free World governments have agreed to control their exports to destinations in the People's Republic of China and Country Groups Q, W, Y and Z. In certain instances, it is necessary to consult with these other Free World governments before action on an application can be taken.

(v) Where one or more of the foreign parties to an export transaction is unknown to the Office of Export Licensing, the U.S. Foreign Service is requested to provide information that will permit action to be taken.

(2) *How to request status information.* (i)(A) Applicants for individual validated export licenses, amendments, or reexport privileges who have received case numbers should contact the System for Tracking Export License Applications ("STELA") at (202) 377-2752 to request status information. STELA is an advanced computer generated voice unit that, upon request via any standard touch-tone telephone, provides up to the minute status on license applications, amendments, or reexport requests. STELA is in operation Monday through Friday from 7:15 a.m. to 11:15 p.m. and on Saturday from 8 a.m. to 4 p.m., Eastern time. After calling STELA on push button telephone keys, the caller will be prompted to enter a case number. The case number entered must use the number "1" to represent the letter "A", the number "2" to represent the letter "B", and the asterisk symbol "*" to represent the hyphen "-" that appears in a case number assigned to an amendment application. The "#" symbol must be used after each case number, and its use is equivalent to an enter command. For example, (*1*) case number A123456, which is assigned to a license application or reexport request, must be entered as "1123456#", and (*2*) case number B123456-1, which is assigned to the first amendment to a license application with assigned case number B123456, must be entered as "2123456*1#".

(B) Applicants for individual validated export licenses, amendments, or reexport privileges who do not have case numbers or who experience difficulty in using STELA may call the Exporter Assistance Staff of the Office of Export Licensing for status information. Calls will be answered Monday through Thursday from 8:00 a.m. to 8:00 p.m. and on Friday from 8:00 a.m. to 5:00 p.m., Eastern time at (202) 377-2753. Status information on special licenses is not available from STELA, but can be obtained from the Licensing Branch, Special Licensing Division, Office of Export Licensing, at (202) 377-3287. Requests for status information may be made only by the applicant or applicant's agent. Callers will identify themselves with information contained on the applicant's file copy of the application.

(ii) More than 90 percent of applications for licenses to export to Country Groups T and V are acted upon within two weeks of receipt in the Office of Export Licensing. Applications for licenses to export to any other country group generally require more intensive scrutiny, but approximately 75 percent of these applications are acted upon within four weeks of receipt.

(iii) Unless emergency circumstances necessitate immediate notification, applicants should not request information until the following time periods expire:

(A) For a destination in Country Group T or V: Three weeks from date application, amendment, or reexport request was mailed.

(B) For a destination in any other country group: Five weeks from date application, amendment, or reexport request was mailed.

NOTE: An additional week has been added to the time period shown in § 770.11(a)(2)(ii) above to allow for postal transport time to and from the Office of Export Licensing. Earlier submissions may only disrupt normal processing operations and cause unnecessary delay in acting upon the case.

(b) *Request for documentation review.* The Office of Export Licensing, in reviewing specific export license applications and requests for reexport authorization, may consult with other U.S. Departments and agencies regarding the proposed export or reexport. While this consultation may be undertaken on any application or request, such consultation usually relates to transactions involving proposed exports or reexports to consignees in the People's Republic of China and Country Groups Q, W and Y, and requests for relief on the basis of unique hardship and exception from short supply export controls (15 CFR Part 777). The general practice of the Office of Export Licensing is to provide a description of the proposed export or reexport to the other agencies in order to permit the agencies consulted to consider all aspects of the issue or issues involved. In order to insure that this documentation accurately describes the proposed export or reexport, the Office of Export Licensing will, upon request from the applicant, provide a copy of that portion of the document(s) being forwarded to the other agencies that describes the export or reexport in question. If the proposed transaction involves an export from the United States, the request should be made at the time the application is submitted by inserting the phrase "Interagency referral information requested" in Item 15, of Form ITA-622P, Application for Export License. If the proposed transaction involves the reexport of U.S.-origin commodities or technical data, the request should be made at the time the request is filed by inserting the phrase "Interagency referral information requested" in Item 10, of Form ITA-699P, Request to Dispose of Commodities or Technical Data Previously Exported. If the reexport request is made by letter, the request shall be included in the letter.

(c) *Request for notification of COCOM review of application.* The United States participates in an international security export control system. The Coordinating Committee (COCOM) of this system reviews proposed transactions to export or reexport certain strategic commodities or technical data to the People's Republic of China and to Country Groups Q, W and Y. The Office of Export Licensing refers certain export license applications and requests for reexport authorization to COCOM for review. Such referral will add two months or more to the usual processing time.

The Office of Export Licensing will notify the applicant, upon request, when a proposed export or reexport is referred to COCOM for review. Request for notification should be made at the time the license application or reexport request is submitted by inserting the phrase "notification of COCOM review requested" in Item 15 of Form ITA-622P, Application for Export License. A party to the transaction who wishes to know the status of cases submitted by the United States to COCOM may contact the Office of East-West Trade, Security Export Controls Division, Room 3817A, Department of State, 2201 C

St., NW., Washington, DC 20520, telephone (202) 647-2885.

(d) *Inquiry regarding applicability of regulations to transactions.* An exporter submitting a written request concerning the applicability of export license requirements to a proposed export transaction or series of transactions, shall provide complete technical specifications and CCL classifications for all the equipment involved and a description of all technical data in the transaction. The request shall also include all available information on the parties to the transaction and proposed end use. The requester must send the inquiry to the Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, clearly marked "Section 770.11(d)" at the top of the first page and on the lower left-hand corner of the envelope. The Bureau of Export Administration will respond to properly submitted requests within 30 days after receipt of the request.

[43 FR 58544, Dec. 15, 1978, as amended at 45 FR 45892, July 8, 1980; 45 FR 58334, Sept. 9, 1980; 47 FR 5206, Feb. 4, 1982; 47 FR 16623, Apr. 19, 1982; 48 FR 53064, Nov. 23, 1983; 51 FR 12839, Apr. 16, 1986; 51 FR 30632, Aug. 28, 1986; 51 FR 43725, Dec. 4, 1986; 52 FR 11640, Apr. 10, 1987; 52 FR 31755, Aug. 24, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055, Mar. 30, 1989]

§ 770.12 Where to obtain Export Administration forms.

Exporters may obtain the forms required to conduct their business in accordance with the Export Administration Regulations from all U.S. Department of Commerce District Offices (see list on page ii under District Office Addresses) or from:

Exporter Assistance Staff, Office of Export Licensing, Room 1099, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Washington, DC 20230

or by writing:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

In addition, for the convenience of foreign consignees and other foreign parties to U.S. export transactions, certain forms commonly used abroad may be obtained at U.S. Foreign Service posts. When forms cited in the Regulations are not available from the above sources, instructions for ordering these will be included in a footnote. The initial time a form is cited within each part, the name of the form, the current form number, and previous form number will be given during a reasonable change-over period. Thereafter, only the latest form number will be used when referring to this form, although previous versions will be accepted unless otherwise indicated. A Forms Supplement containing samples of the most commonly used export control forms is included as an addendum to the Export Administration Regulations.

[48 FR 20043, May 4, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 770.13 Procedures for processing license applications.[7]

(a) *General.* This section implements section 10 of the Export Administration Act of 1979, as amended (the Act), which prescribes procedures for processing export license applications, including time limits for certan stages of the process. Section 770.14 describes shorter processing time frames for certain export license applications for certain selected other countries. The procedures and time limits set forth in this section apply to all applications received in the Office of Export Licensing (OEL) on or after July 12, 1985. The procedures and time limits in effect prior to July 12, 1985 will apply to applications received prior to July 12, 1985. As set forth in paragraph (g) of this section, applications subject to nuclear non-proliferation controls are not subject to all the requirements of this section. As used in this section:

(1) "Application" means applications for individual validated export licenses, requests for reexport authorizations, parts and components requests, requests to export the foreign product of U.S. technical data, and requests to amend any of the foregoing.

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[7] See § 772.4(h) for procedures to expedite processing of an export license application in an emergency situation.

(2) "Date of receipt" is the date a case number is assigned to the application by OEL.

(b) *Initial screening.* Within 10 days after the date an application is received in OEL, that Office will either accept the application for further processing or, if it determines that the application is improperly completed or additional information is required, return the application to the applicant without action. When returning an application, OEL will inform the applicant of the specific deficiencies that must be corrected. Any such applications that are resubmitted to OEL will be treated as new applications for the purpose of establishing processing time limits. If OEL accepts an application for further processing it will send the applicant an acknowledgment that:

(1) Includes the date of receipt, the applicable case number, and a description of the procedures required by section 10 of the Act, the responsibilities of the various agencies that will be reviewing the application, and the rights of the applicant;

(2) Informs the applicant if, based on an initial analysis, the application needs to be referred to any other agency, and identifies the agencies; and

(3) Notifies the applicant if, based on an initial analysis, the application must be referred for multilateral (CoCom) review.

(c) *Decision by Office of Export Licensing when referral to other agencies is not necessary.* When an application need not be referred to other agencies, OEL will either issue or deny a license within 60 days of receipt.

(d) *Referral to other agencies.* (1) To the maximum extent possible, OEL will make licensing decisions without referral of applications to other agencies. When referral of an application to other agencies has been determined to be necessary, OEL will, within 20 days of receipt, refer the application, together with all necessary analysis and recommendations, concurrently to all agencies identified in the acknowledgment. However, OEL may refer the application at any time if: (i) An agency requests referral to additional agencies, (ii) referral becomes necessary due to changes in policies, or more detailed analysis during processing of the application indic the need for referral. The applic shall be informed of any such refer

(2) If requested by the applic OEL will provide the applicant an portunity to review for accuracy documentation describing the posed export that accompanies a ref ral to other agencies, to determi whether such documentation ac rately describes the proposed expo (See § 770.11(b) regarding requests such review.)

(e) *Action of other agencies.* Wh an application is submitted to anoth agency, section 10 of the Act impo specific requirements. The agen shall furnish to OEL, within 20 da of the receipt by the agency, the re quested information or recommend tions. If the agency is unable to com plete its review within 20 days it sha advise OEL that it requries an add tional 20 days. If no response is re ceived by OEL at the end of the days, or at the end of 40 days if the e tension is used, OEL will deem th agency to have no objections to ap proval.

(f) *Action by Department of Defens* (1) The Secretary of Defense is au thorized by section 10(g) of the Act t review proposed exports to countrie to which exports are controlled for na tional security purposes, and, in consultation with the Secretary of Commerce, to identify the types and categories of transactions to be subject t such review.

(2) Not later than 20 days (or 4 days if the extension described i paragraph (e) of this section is required) after receipt by the Secretary of Defense of a referral of an export license application for a transaction described in paragraph (f)(1) of this section the Secretary of Defense is required under section 10 of the Act to advise the Secretary of Commerce that he/she:

(i) Recommends approval;

(ii) Recommends approval subject t specified conditions; or

(iii) Recommends denial, based on a determination that the export would make a significant contribution to the military potential of a country de scribed in paragraph (f)(1) of this section that would prove detrimental to the national security of the United States. If the Secretary of Commerce does not agree that the application should be denied, and differences cannot be resolved in interagency discussions, the matter shall be referred to the President for decision.

(3) If the application is referred to the President by the Secretary of Defense with a recommendation for denial, the Secretary of Commerce may not approve such an application until the President has had an opportunity to review the application. If the President notifies the Secretary of Commerce that he/she concurs in the Defense recommendation, the license will be denied.

(g) *Special procedure for certain nuclear-related applications.* In accordance with section 17(d) of the Act, the provisions of this section apply to applications referred to the Subgroup on Nuclear Export Coordination only to the extent they are consistent with procedures published pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (See Supplement No. 1 to Part 778). If processing of such an application is not completed within 180 days of receipt by OEL, the applicant has the right of petition set forth in paragraph (m) of this section.

(h) *Action on agency recommendations.* Except as provided in paragraph (k) of this section within 60 days of receipt of the recommendations of other agencies or expiration of the times allowed for comment by paragraphs (e) and (f) of this section, whichever is earlier, OEL shall resolve any interagency conflict and issue or deny a license.

(i) *Questions, and negative considerations or recommendations.* (1) If during the processing of an application that has been referred to another agency for review, such agency raises questions (including requests for additional information), or negative considerations or recommendations, to the maximum extent consistent with the national security or foreign policy of the United States, OEL will inform the applicant in writing of, and provide an opportunity to respond in writing to, any such questions or negative considerations or recommendations. OEL will consider the applicant's response, if any, before a decision is made.

(2) OEL may at its own initiative inform the applicant in writing of any questions or negative considerations regarding the application if it determines during the review of an application that this is necessary. The applicant will be given an opportunity to respond in writing and the response will be considered in making a decision.

(3) If an applicant is informed of any questions, negative considerations or recommendations, OEL will allow the applicant 30 days after receipt to provide a written response, but will consider reasonable requests for extensions. "Day of receipt" is the day on which the applicant receives the negative consideration letter. In the absence of evidence to the contrary, OEL will presume "receipt" by the applicant 7 days after the date of the letter. Within 15 days after receipt, the applicant may file a written request to respond in person to the department or agency raising such questions, considerations or recommendations. Such requests will be granted to the maximum extent consistent with the national security and foreign policy interests of the United States. Failure to respond within the time periods set by OEL may result in a denial of the application or return of the application without action.

(4) When questions are raised, the application may be returned to the applicant for revision when, in the view of OEL, this would facilitate further processing.

(j) *Denials of licenses.* (1) The applicant will be notified in writing of the intent to deny a license. Such notification will be provided within 5 days of OEL's decision.

(2) The notice will state the statutory basis for denial, the policies set forth in section 3 of the Act that would be furthered by denial, the specific considerations that led to denial (to the extent consistent with national security and foreign policy), and the availability of appeal procedures. If appropriate, the notice will indicate what modifications in or restrictions

on the goods or technology would allow the export to be compatible with export control policies, or indicate which officers or employees of OEL will be made reasonably available for consultation with the applicant. The applicant may respond in writing to the notification of intent to deny within 30 days of the date of the notification. OEL will advise the applicant if the intent to deny is changed as a result of the applicant's response. Unless the applicant is so advised by the 45th day after the date of the notification of intent to deny, the denial will become final without further notification by OEL. The applicant will then have 45 days from the date of final denial to exercise the right to appeal under Part 789.

(k) *Extension of time period and suspension of processing.* (1) Any of the time limits set forth in this section may be extended by OEL upon a determination that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required to negotiate modifications. The applicant and the Congress shall be notified of any such extensions and the reasons therefor.

(2) The time limits set forth in this section may be extended by OEL to take into account delays in processing an application as a result of the provisions of section 7(d) of the Act (60 day notification of Congress regarding the export of certain crude oil) and section 7(e) (30 day notification of Congress regarding certain exports of refined petroleum products).

(3) The applicant may voluntarily extend any processing time limits. The time provided by such voluntary extension shall not count against the time limits set forth in this section.

(4) In any case where the applicant is provided the opportunity to respond to any questions, or negative considerations or recommendations, further processing of the application shall be suspended pending receipt of the applicant's written response. Accordingly, the time taken by the applicant to provide such written response will be excluded from the computation of the time limits of this section.

(l) *Multilateral review.* Pursuant to international agreement, certain applications for export to the People's Republic of China and Country Groups Q, W, and Y must be referred for multilateral (CoCom) review and concurrence. Such referral is made only after full review by Commerce and other agencies, as necessary, and a tentative decision that the application should be approved. The applicant will be notified of Commerce's tentative approval and the date thereof. No shipments may be made until a license is issued by OEL. If a decision by CoCom is not received within 40 days of the date of tentative approval, the license will be issued unless it is determined by an appropriate official in OEL that issuance of the license without CoCom approval would be detrimental to the national security of the United States. If such a determination is made, the applicant will be notified of the status of the application and that additional time is required, both at the expiration of the original 40 day period and if necessary, at 40 day intervals thereafter.

(m) *Petition for compliance with license application processing requirements*—(1) *Who may file a petition.* Any person who has filed an application for an export license with OEL pursuant to the Act, and whose application has not been processed within the time periods set forth in this section, including any extensions pursuant to paragraphs (k) (1) or (2) of this section, may file a petition requesting compliance with the requirements of this section.

(2) *Where to file a petition.* A petition shall be filed with the Office of the Assistant Secretary for Export Administration, Room H-3886C, U.S. Department of Commerce, Washington, DC 20230.

(3) *Content of petition.* Each petition submitted under paragraph (m) must be in writing, and shall cite the case number assigned to the license application, the date on which the application was filed with OEL, and the specific processing deadlines that allegedly are not being complied with. The petitioner shall attach to the petition a copy of the license application and copies of all correspondence with

the Department of Commerce relating to the processing of the application.

(4) *Response to filing of petition.* (i) Upon receipt of a petition, the Assistant Secretary for Export Administration or his/her designee (AS), shall send an acknowledgment of receipt of the petition and review the merits of the petition.

(ii) If the AS determines that the license application is being processed in conformity with the prescribed time periods, the AS shall so notify the petitioner, and shall state the reasons for that determination.

(iii) If the AS determines that the application is not being processed in accordance with the prescribed time periods, the AS shall notify the petitioner of the steps to be taken to correct the situation giving rise to the petition. The AS shall continue to monitor the license application that is the subject of the petition to assure that the processing of the application is brought into conformity with the prescribed time periods and shall immediately notify the petitioner when this is done.

[45 FR 45893, July 8, 1980, as amended at 45 FR 58334, Sept. 3, 1980; 48 FR 20044, May 4, 1983; 48 FR 53064, Nov. 23, 1983; 50 FR 48746, Nov. 27, 1985; 51 FR 12839, Apr. 16, 1986; 52 FR 32122, Aug. 26, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055, Mar. 30, 1989]

§ 770.14 Processing license applications for COCOM participating countries and other selected countries.

(a) *General.* Section 10(o) of the Act provides for different processing time frames for license applications for exports of COCOM controlled items to countries participating in COCOM, the multilateral Coordinating Committee that cooperates in maintaining strategic export controls; these special processing time frames also apply to license applications for shipments to Austria, Finland, Korea (Republic of), Sweden, and Switzerland. The procedures and time limits set forth in this section apply to license applications received in the Office of Export Licensing on or after the date that each country's eligibility was published in the FEDERAL REGISTER. License applications to one of the above countries received prior to that country's eligibility date will be processed under the previous time frames. Applications subject to nuclear non-proliferation controls that are referred to the interagency Subgroup on Nuclear Export Coordination are not subject to the time limits in this section, but will be processed in accordance with § 770.13(g). As used in this section:

(1) "Application" means applications for individual validated export licenses, requests for authorization to reexport, and requests to amend validated licenses and reexport authorizations, properly completed and accompanied by all required supporting documentation. OEL will not consider requests to amend a pending application that is subject to this procedure. (If amendment of a pending application is necessary, the application may be withdrawn and a new application submitted). A properly completed application under this procedure must include the name, telephone number and telex number (if any) of the responsible party who has knowledge of the proposed transaction and has authority to control shipment of the subject items.

(2) "Date of receipt" is the date a case number is assigned to the application by OEL.

(3) Eligible Countries.

(i) "COCOM participating country" means Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom.

(ii) "Other selected countries" means Austria, Finland, Korea (Republic of), Sweden, and Switzerland.

(4) "COCOM controlled item" means any item on the Commodity Control List identified by the letter "A" following the four-digit Export Control Commodity Number, and technical data identified in § 779.4(d) (10), (12), (13), (16), (17), and (18).

(5) "Working days" means Monday through Friday, except federal holidays.

(6) "Export to countries not listed in paragraph (a)(3) of this section means a direct export or reexport to that country. Applications that include in-

termediate consignees in non-COCOM participating or other selected countries or requests to reexport to countries not listed in paragraph (a)(3) of this section will not be processed under this section, but will be subject to § 770.13.

(b) *Initial screening.* Promptly after receipt of an application to export a COCOM controlled item to a COCOM participating or other selected country and in no case later than 10 days, OEL will either accept the application for processing or, if it determines that the application is improperly completed or additional information is required, return the application to the applicant without action. When returning an application, OEL will inform the applicant of the specific deficiencies that must be corrected. Any such applications that are resubmitted to OEL must be submitted on a new Form ITA-622P or ITA-699P, as appropriate, attaching the previous application. Such resubmitted applications will be treated as new applications for the purpose of establishing processing time limits. If OEL accepts an application for further processing, it will immediately send the applicant a written acknowledgement that—

(1) Provides the date of receipt, the applicable case number, a description of the procedures required by section 10 of the Act and in particular section 10(o), the responsibilities of the various agencies that may review the application, and the rights of the applicant; and

(2) Notifies the applicant whether or not the application will be referred to another agency, and identifies the agency.

(c) *Action by the Office of Export Licensing.* (1) Within 15 working days of receipt, OEL will either

(i) Issue the license;

(ii) Deny the license; or

(iii) Notify the applicant that an additional 15 working days will be required to process the application. Notification of the need for additional time may be included in the initial acknowledgement or in a separate communication.

(2) If the applicant is notified that additional time is required, OEL will, within 30 working days of receipt, either—

(i) Issue the license, or

(ii) Deny the license.

(3) Notification of return without action, rejection, conditions attached to an approval, or the need for an additional 15 days (unless included in the original acknowledgement) will be made by telex, courier service, or other means that assures prompt delivery and verification of receipt. When timely written notification is not possible, the responsible party named on the application will be advised by telephone, with written confirmation sent the next working day.

(d) *Review by other agencies.* When review by another agency is necessary, OEL will allow that agency reasonable time for concurrent review of the application within the 15 to 30 working days allowed by the Act.

(e) *Denials.* (1) Within five days of a decision to deny an application, the applicant will be sent written notice of intent to deny. The written notice will state the statutory basis for denial, the policies set forth in section 3 of the Act that would be furthered by denial, the specific considerations that led to denial, (to the extent consistent with national security and foreign policy), and the availability of appeal procedures. If appropriate, the notice will indicate what modifications in or restrictions on the goods or technology would allow the export to be compatible with export control policies, or indicate which officers or employees of OEL will be made reasonably available for consultation with the applicant.

(2) The applicant may respond in writing to the notice of intent to deny within 30 days of the date of the written notice. OEL will advise the applicant if the intent to deny is changed as a result of the applicant's response. Unless the applicant is so advised by the 45th day after the date of the notification of intent to deny, the denial will become final without further notification by OEL. The applicant will then have 45 days from the date of final denial to exercise the right to appeal under Part 789.

(f) *Action by applicant.* (1) If the applicant has received written acknowedgement pursuant to paragraph (b) of date of receipt and case number, but has received no notification of intent to deny, return without action, need for an additional 15 working days, or license approval, the applicant may, on the 16th working day after the date of receipt of the application by OEL:

(i) Assume the license to be issued and effective; and

(ii) Export the COCOM controlled item to the COCOM participating or other selected country, using the case number assigned in the written acknowledgement of receipt as the license number. The transaction must conform in all respects with the description contained in the application.

(2) If the applicant has received written acknowledgement pursuant to paragraph (b) notice of date of receipt and case number, and notification of the need for an additional 15 days, but has received no notification of intent to deny, return without action, or license approval, the applicant may, on the 31st working day after the date of receipt of the application by OEL;

(i) Assume the license to be issued and effective; and

(ii) Export the COCOM controlled item to the COCOM participating or other selected country using the case number assigned in the written acknowledgement of receipt as the license number. The transaction must conform in all respects with the description contained in the application.

(3) When exporting under paragraphs (1) or (2) above, the exporter must insert "770.14" directly after the license number on the Shipper's Export Declaration, or on other available shipping documents if the Shipper's Export Declaration is not required or is not readily available for inspection. The Shipper's Export Declaration may be signed by an agent of the exporter who was identified as point of contact on the license application or other authorized agent of the exporter who has knowledge of the transaction and has authority to control shipment of the subject items. Use of "770.14" on a Shipper's Export Declaration constitutes a certification by the exporter that the exporter has received written acknowledgement pursuant to paragraph (b) of date of receipt and case number from OEL, that the exporter has not received notification of intent to deny, return without action, or conditional approval, or (during the first 15 working days) need for additional processing time, and that the applicant has not received a license or notification of license approval.

(4) Knowledge of date of receipt and case number through return postcard, telephone contact with OEL, or other means does not constitute sufficient basis for shipment under this paragraph (f). The applicant *must* have received the written acknowledgement described in paragraph (b) of this section.

(g) *Extention of time limits.* The applicant may voluntarily extend the processing time limits. Any application that would normally be processed under the accelerated time limits of this section will be processed, following a voluntary extension, in accordance with the time limits of § 770.13.

[50 FR 48747, Nov. 27, 1985, as amended at 51 FR 28693, Aug. 11, 1986; 52 FR 32122, Aug. 26, 1987; 52 FR 32539, Aug. 28, 1987; 53 FR 6143, Mar. 1, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 21937, May 22, 1989; 55 FR 51277, Dec. 13, 1990]

§ 770.15 Administrative action denying permission to apply for or use export licenses.

(a) *General.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may deny permission to apply for or use any export license, including any general license, to any person who has been convicted of a violation of the Export Administration Act, or any regulation, license, or order issued under the Act; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18 U.S.C. 793, 794 or 798; Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny permission to apply for or use any export license, including a general license, to any such person. The Director, Office of Export Licensing, shall notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(c) *Criteria.* In determining whether to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director, Office of Export Licensing may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

(d) *Duration.* Any denial of permission to apply for or use licenses under this section shall not exceed 10 years.

(e) *Effect.* Any person denied permission to apply for and use licenses under this section shall be considered a "person denied export privileges" for purposes of § 787.12.

(f) *Publication.* The name and address(es) of any person denied permission to apply for or use export licenses under this section shall be published in Supplements 1 and 2, Part 788, noting that such action was taken pursuant to this section and section 11(h) of the Act.

(g) *Appeal.* An appeal of an action under this section shall be pursuant to Part 789.

(h) *Applicability to related person.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may, through the Chief Counsel for Export Administration, notify any person related through affiliation, ownership, control, or position or responsibility to any person denied export privileges under paragraph (a) of this section, of his intent to deny that person permission to apply for or use any export license, including any general license. Such person so notified may request a hearing by filing a request for a hearing with the Office of The Administrative Law Judge, Room H6716, 14th Street and Constitution Avenue NW., Washington, DC 20230 and by serving a copy of the request for a hearing on the Office of the Chief Counsel for Export Administration. The sole issue to be raised and ruled on under this paragraph is the question whether such person so notified is related to any person denied export privileges under paragraph (a) of this section, and not the scope or duration of the underlying denial. The provisions of Part 788 of this chapter shall apply to any hearing requested under this paragraph (h).

[50 FR 53131, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 4005, Jan. 27, 1989]

SUPPLEMENT NO. 1—COUNTRY GROUPS

For export control purposes foreign countries are separated into seven country groups designated by the symbols "Q", "S", "T", "V", "W", "Y", and "Z". Listed below are the countries included in each country group. Canada is not included in any country group and will be referred to by name throughout the Export Administration regulations.

COUNTRY GROUP Q

Romania

COUNTRY GROUP S

Libya

COUNTRY GROUP T

North America

Northern Area:
- Greenland
- Miquelon and St. Pierre Islands

Southern Area:
- Mexico (including Cozumel and Revilla Gigedo Islands)

Central America

- Belize
- Costa Rica
- El Salvador
- Guatemala
- Honduras (including Bahia and Swan Islands)
- Nicaragua
- Panama

Bermuda and Caribbean Area:
- Bahamas
- Barbados

Bermuda
Dominican Republic
French West Indies
Haiti (including Gonave and Tortuga Islands)
Jamaica
Leeward and Windward Islands
Netherlands Antilles
Trinidad and Tobago

South America

Northern Area:
  Colombia
  French Guiana (including Inini)
  Guyana
  Surinam
  Venezuela
Western Area:
  Bolivia
  Chile
  Ecuador (including the Galapagos Islands)
  Peru
Eastern Area:
  Argentina
  Brazil
  Falkland Islands (Islas Malvinas)
  Paraguay
  Uruguay

COUNTRY GROUP V

All countries not included in any other country group (except Canada).

COUNTRY GROUP W

Hungary
Poland

COUNTRY GROUP Y

Albania
Bulgaria
Czechoslovakia
Estonia
Laos
Latvia
Lithuania
Mongolian People's Republic
Union of Soviet Socialist Republics

COUNTRY GROUP Z

North Korea
Vietnam
Cambodia
Cuba

[43 FR 58544, Dec. 15, 1978, as amended at 44 FR 75382, Dec. 19, 1979; 45 FR 27923, Apr. 25, 1980; 45 FR 37184, June 2, 1980; 46 FR 21155, Apr. 9, 1981; 47 FR 11248, Mar. 16, 1982; 48 FR 53064, Nov. 23, 1983; 50 FR 23404, June 4, 1985; 50 FR 29205, July 18, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988; 55 FR 40826, Oct. 5, 1990]

SUPPLEMENT NO. 2—U.S. MUNITIONS LIST

The following articles[1] are designated by the Office of Munitions Control, U.S. Department of State, as arms, ammunition, and implements of war:[2]

CATEGORY I—FIREARMS

(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See § 121.9 and 123.16–123.19.)[3]

(b) Riflescopes manufactured to military specifications, and specially designed or modified components therefor; firearm silencers and suppressors, including flash suppressors.

(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (*e.g.*, close assault weapons systems) regardless of caliber and all parts and components therefor.

CATEGORY II—ARTILLERY PROJECTORS

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flamethrowers and projectors.

(c) Components, parts, accessories and attachments for the articles in paragraph (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

CATEGORY II—AMMUNITION

(a) Ammunition for the arms in Categories I and II of this section. (See § 121.6.)[3]

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, power bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition. (See § 121.6.)[3]

(c) Ammunition belting and linking machines.

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[1] The term "article" shall mean any of the arms, ammunition, and implements of war and technical data relating thereto enumerated in the United States Munitions List.

[2] Arms, ammunition and implements of war must be mangled, crushed or cut beyond the possibility of restoration to their original identity, before they can be licensed by the Export Administration for export as scrap metal. (See Supplement No. 1 to section 799.2, Interpretation 12.)

[3] This cross-referenced section refers to the regulations of the Office of Munitions Control, U.S. Department of State, Washington, DC 20520, 22 CFR Part 120, *et seq.*

(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.) [3]

(b) Launch vehicles and missile and antimissile systems, including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)[3]

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semifabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

(g) Non-nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

CATEGORY V—EXPLOSIVES, PROPELLANTS, AND INCENDIARY AGENTS

(a) Military explosives. (See § 121.12.) [3]

(b) Military fuel thickeners. (See § 121.13.) [3]

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.) [3]

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.) [3]

(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic ones) and controls and components therefor.

(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21.) [3]

CATEGORY VII—TANKS AND MILITARY VEHICLES

(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

(b) Military tanks, combat engineer vehicles, bridge launching vehicles, halftracks and gun carriers.

(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraphs (a) of Categories III and IV.

(e) Military recovery vehicles.

(f) Amphibious vehicles. (See § 121.4.) [3]

(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes, but is not limited to, the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training. (See § 121.3.) [3]

(b)(1) Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category VIII(b)(2)).

(2) Non-military communication satellites (excluding ground stations and associated equipment not enumerated elsewhere in § 121.1).[3]

(c) Military aircraft engines, except reciprocating engines, and spacecraft engines and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

(d) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment specifically designed or modified for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching and recovery equipment for the articles in paragraphs (a) and (b) of this category, if the equipment is specifically designed or modified for military use or for use with spacecraft. Fixed land-based arresting gear is not included in this category.

(f) Power supplies and energy sources specifically designed or modified for spacecraft.

(g) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (f) of this category, excluding aircraft tires and propellors used with reciprocating engines.

(h) Developmental aircraft components which have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

(i) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(j) Inertial navigation systems and components designed specifically for such systems. Systems or components which are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and which are certified by the Federal Aviation Administration as being an integral part of such aircraft are subject to export regulation by the Office of Munitions Control only if the export is intended for a controlled country described in section 620(f) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)) (except Yugoslavia). The Export Administration Act of 1979, as amended (50 U.S.C. App. section 2416(c)) deals with the export of such items to non-controlled countries. All exports of technical data (regardless of destination) relating to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components, or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data relating to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) which are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

CATEGORY IX—MILITARY TRAINING EQUIPMENT

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b) and (c) of this category.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

(a) Electronic equipment not included in Category XII of the Munitions List which is assigned a military designation or is specifically designed, modified or configured for military application. This includes but is not limited to the following:

(1) Underwater sound equipment, including but not limited to towed arrays, electronic beam forming sonar, target classification equipment and spectrographic displays; search, acquisition, tracking moving target indication and imaging radar systems; active and passive countermeasures and counter-

countermeasures equipment; electronic fuses; identification systems; command, control and communications systems; and, regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system and

(2) Sonic depth finders; underwater telephones; electro-mechanical beam forming sonars and elementary sonobuoys; radios (including transceivers); weather, navigation, and air traffic control radar systems; navigation, guidance, object-locating equipment; displays; and telemetering equipment.

(3) Armored coaxial cable of RF, optical, or high voltage power transmission.

(b) Space electronics:

(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with nonmilitary communications satellites.

(c) Electronic systems or equipment specifically designed, modified, configured, used or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum for intelligence or security purposes and electronic systems or equipment designed or modified to counteract such surveillance and monitoring.

(d) Very High Speed Integrated Circuit (VHSIC) semiconductor devices that are specifically designed for military applications and which have a high-speed signal and image processing capability with an operational parameter (gat-time-clock-frequency) or greater than 10^{11} gates X hertz for an individual semiconductor device.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use or currently used with the equipment in paragraphs (a) through (c) of this category, except for such items as are in normal commercial use.

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensified and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipments; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

Category XIII—Auxiliary Military Equipment

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and components specifically designed or modified therefore.

(b) Speech scramblers, privacy devices, cryptographic devices and software (encoding and decoding), and components specifically designed or modified therefore, ancillary equipment, and protective apparatus specifically designed or modified for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus specifically designed or modified for a military purpose and components specifically designed or modified therefore.

(d) Armor plate and structural materials (including but not limited to plate, rolled and extruded shapes, bars and forgings, castings, welding consumables, carbon/carbon and metal matrix composites) specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and components, parts and accessories specifically designed or modified therefore.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology.

(i) Metal embrittling agents.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulation containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)[3]

(b) Biological agents.

(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

CATEGORY XV—[RESERVED]

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 [3] and Department of Commerce Export Regulations, 15 CFR Part 778).

(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

CATEGORY XVII—CLASSIFIED ARTICLES NOT OTHERWISE ENUMERATED

All articles and technical data (as defined in § 120.21) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

CATEGORY XVIII—TECHNICAL DATA

Technical data (as defined in § 120.1) relating to the defense articles listed in the other categories of the United States Munitions List. (See § 125.4 for exemptions; see also § 123.21.)[3]

CATEGORY XIX—DEFENSE SERVICES

Defense services (as defined in § 120.8)[3] related to the defense articles listed in the other categories of the United States Munitions List.

CATEGORY XX—SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT

(a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in this subchapter specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

CATEGORY XXI—MISCELLANEOUS ARTICLES

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Munitions Control.

[50 FR 3741, Jan. 28, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 3—NUCLEAR EQUIPMENT AND MATERIAL UNDER NRC LICENSING AUTHORITY

(a) Nuclear reactors and specially designed or prepared parts and components therefor, as follows:

(1) Reactor pressure vessels, i.e., metal vessels as complete units or as major shop-fabricated parts therefor, which are specially designed to contain the core of a nuclear reactor and are capable of withstanding the operating pressure of the primary coolant.

(2) Reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed or prepared for inserting or removing fuel in a nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(5) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in nuclear reactors.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

(9) Any other component specially designed or prepared for use in a nuclear reactor.

(10) Specially designed or prepared parts and components for any of the above.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and specially designed or prepared equipment and components therefor, as follows:

(1) Uranium hexafluoride (UF_6) corrosion-resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as (i) gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexafluoride (UF_6) corrosion-resistant axial or centrifugal compressors, and specially designed or prepared seals for such compressors.

(4) Gaseous diffusion barriers specially designed or prepared for use in separating isotopes of source material, special nuclear material or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other equipment or component specially designed or prepared for use in an isotope separation plant.

(8) Specially designed or prepared parts and components for any of the above.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements or irradiated lithium and specially designed or prepared equipment and components therefor, as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop or shear irradiated nuclear reactor fuel assemblies bundles or rods.

(2) Criticality safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Countercurrent solvent extractors specially designed or prepared for use in a reprocessing plant.

(4) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(5) Any other equipment or components specially designed or prepared for use in a reprocessing plant.

(6) Specially designed or prepared parts and components for any of the above.

(d) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared parts and components therefor.

(e) Plants for the production of heavy water, deuterium and deuterium compounds, and specially designed parts and components therefor.

(f) Nuclear material as follows:

(1) Special nuclear material, as follows: plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

(2) Source material as follows: uranium or thorium, other than special nuclear material; and ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

(3) Byproduct material as follows: radioactive material (except special nuclear material) produced by exposure to the radiation incident to the process of producing or using special nuclear material.

(4) Deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5,000.

(5) Nuclear grade graphite (graphite with a boron content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter).

[43 FR 58544, Dec. 15, 1978. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 771—GENERAL LICENSES

Sec.

771.1 Definition.
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771.4 General License GIT; intransit shipments.
771.5 General License GLV; shipments of limited value.
771.6 General License baggage.
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771.8 General License G-COM; certain shipments to cooperating countries.
771.9 General License Ship Stores.
771.10 General License PLANE STORES.
771.11 General License Crew.
771.12 General License RCS; shipments to U.S. or Canadian vessels, planes, and airline installations or agents.
771.13 General License GUS; shipments to personnel and agencies of the U.S. Government.
771.14 General License GCG; shipments to agencies of cooperating governments.
771.15 General License GTF-U.S.; goods imported for display at U.S. exhibitions or trade fairs.
771.16 General License G-NNR; shipments of certain Non-Naval reserve petroleum commodities.

Sec.
771.17 General License GLR; return or replacement of certain commodities.
771.18 General License GIFT; shipments of gift parcels.
771.19 General License GATS; aircraft on temporary sojourn.
771.20 General License G-CEU; certified end-users.
771.21 General License GTDA and GTDR; technical data.
771.22 General license G-TEMP; temporary exports.
771.23 General license GFW; low level exports to certain countries.
771.24 General License G-COCOM; certain shipments to cooperating countries.
771.25 General License GCT; COCOM Trade.
SUPPLEMENT 1 TO PART 771—CERTIFIED END-USERS

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 371 was redesignated as Part 771 at 53 FR 37751, Sept. 28, 1988.

§ 771.1 Definition.

A "general license" is a license established by the U.S. Department of Commerce permitting export within the provisions thereof as prescribed in the Export Administration Regulations.[1] No written authorization is required for using a general license and no document is issued by Commerce as a precondition to use a general license. A general license is not applicable to the export of commodities or technical data under the licensing jurisdiction of agencies other than the Department of Commerce.

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970, as amended at 52 FR 6138, Mar. 2, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 49276, Nov. 27, 1990]

§ 771.2 General provisions.

(a) *Export declarations.* No export may be made pursuant to any general license unless, prior to such export, whenever required by the Export Administration Regulations, or by the Census Bureau Foreign Trade Statistics Regulations, a Shipper's Export Declaration describing the commodity or commodities to be exported has been filed with the customs office at the port of export or with the Postmaster at the place of mailing; or unless, at the time of such export, whenever the filing of a declaration is not required, an oral export declaration describing the commodity(ies) is made to a customs officer at the port of export.

(b) *Use of general license symbol*—(1) *Shipper's export declaration.* A person exporting any commodity or technical data pursuant to any general license shall enter on any required Shipper's Export Declaration, the general license symbol authorizing the export. The use of such symbol shall constitute a certification by the exporter that the terms, provisions, and conditions of the general license have been met.

(2) *Mail shipments.* (i) Except as provided in paragraph (b)(2)(ii) of this section, the general license symbol shall be entered on the address side of the parcel wrapper and shall be followed by the phrase "Export License Not Required." The use of such symbol and phrase constitutes a certification by the exporter that the terms, provisions, and conditions of the general license have been met.

(ii) Neither the symbol nor the phrase is required if the material meets the provisions of General License GTDA or GTDR, or if it does not require a validated license for shipment to any destination. In the latter instance, the word "none" appears on the Commodity Control List in the column headed "Validated License Required for Shipment to Country Groups Shown Below".

(c) *Prohibited shipments.* No general license may be used to effect an export to any destination if:

(1) The general license has been suspended, revoked, or is otherwise not

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[1] See Table of General Licenses at end of Summary preceding Part 768 for a brief statement of the provisions of each General License.

applicable to the intended destination. (General licenses and other authorizations to export may, at any time without prior notice, be revised, suspended, or revoked by the Export Administration as set forth in § 770.3(b) of this subchapter, whenever there is reason to believe that the export regulations have been, or will be violated.);

(2) The commodity and/or technical data will be unladen from a vessel or aircraft in Country Group Y or Z, or will move in transit through Country Group Y or Z, en route to another country, except as provided in § 770.9 of this subchapter;

(3) The shipment, except for an export of a commodity under General License RCS (see § 771.12), is destined to, or for the use of, a foreign vessel or aircraft whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a general license permits the shipment to be made (i) to the country in which the vessel or aircraft is located, and (ii) to the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and (iii) to the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft;

(4) The export of the commodity and/or technical data is contrary to a denial or probation order listed in Supplement No. 1 to Part 788 of this subchapter;

(5) The exporter knows or has reason to believe that the commodity and/or technical data will be reexported from the country of the foreign purchaser and/or ultimate consignee, and such reexport has not been approved by the Office of Export Licensing either specifically or by general authorization in the Export Administration Regulations, or is otherwise prohibited by the Export Administration Regulations. (See Part 774 of this subchapter);

(6) [Reserved]

(7) The exporter knows, or has reason to know, that the commodity will be used in any destination except the countries listed in Supplement No. 2 to Part 773, either directly or indirectly in any of the following activities, whether or not the commodity is specifically designed or modified for such activities:

(i) Designing, developing, fabricating or testing nuclear weapons or nuclear explosive devices;[2] or

(ii) Designing, constructing, fabricating, or operating the following facilities, or components for such facilities[3]—

(A) Facilities for the chemical processing of irradiated special nuclear or source material;

(B) Facilities for the production of heavy water;

(C) Facilities for the separation of isotopes of source and special nuclear material; or

(D) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(8) The commodity is an electronic, mechanical, or other device, as described in § 776.13, primarily useful for surreptitious interception of wire or oral communications, except that such commodity may be exported under general license GUS (§ 771.13);

(9) The commodity or technical data are controlled by another U.S. Government agency (see § 770.10);

(10) The commodity is listed in a Supplement to Part 777 as being subject to short supply licensing controls, unless the export is authorized under the provisions of general licenses G-

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[2] Commodities specifically designed or specifically modified for use in designing, developing, or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Munitions Control, U.S. Department of State or the licensing or other restrictions specified in the Atomic Energy Act of 1954 as amended. Similarly, commodities and technical data specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[3] Such activities may also require a specific authorization from the Secretary of Energy pursuant to section 57.b.(2) of the Atomic Energy Act of 1954 as amended, as implemented by regulations of the Department of Energy published in 10 CFR Part 810.

NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, or GUS;

(11) The exporter or reexporter knows or has reason to know that the commodity is for delivery, directly or indirectly, to or for use by or for military or police entities in the Republic of South Africa. This includes commodities for purposes of servicing equipment owned, controlled or used by or for such entities. In addition, no general license may be used for an export of computers, computer software, and goods to service or manufacture computers to the Republic of South Africa where the export involves an apartheid-enforcing entity as set forth in § 785.4(a)(9)(i); or

(12) The technical data is related to commodities listed in § 779.4(c) (5), (6), (7), and (8); or

(d) *Choice of general license.* When two or more types of general licenses are applicable, any one of such general licenses may be used. However, exports of commodities under any applicable general license on a vessel or aircraft of foreign registry departing from the United States for use on board such vessel or aircraft must conform to the requirements for export under General License Ship Stores or General License Plane Stores. (See §§ 771.9 and 771.10.)

(e) *Country groups.* When a commodity can be exported under a general license to a particular country group (see Supplement 1 to Part 770 of this subchapter for list of country groups) it may, subject to the provisions of the Export Administration Regulations, be exported to any destination in that country group. Conversely, if the commodity cannot be exported to a particular country group, it cannot be exported to any destination in that group.

(f) *Consignee/consignor control under general license.* (1) General licenses may be revoked or suspended as to any person within or without the United States by an order issued pursuant to the provisions of Part 788 of this subchapter.

(2) Subject to the provisions of each general license, shipments may be made thereunder by any consignor to any consignee in any destination except persons for whom the general license privilege has been revoked or suspended.

(g) *Recordkeeping.* The Export Administration regulations require the keeping of records. See § 787.13 of this subchapter.

(h) *OEL mailing address.* All written reports or requests submitted to Office of Export Licensing under this Part 371 should be mailed to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044, unless the regulation indicates another address.

(i) *OEE mailing address.* All documentation and reports submitted to the Office of Export Enforcement under this Part 771 should be mailed to: Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044.

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 771.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 771.3 General License G-DEST; shipments of commodities to destinations not requiring a validated license.

(a) *Scope.* A general license designated G-DEST is established, authorizing, subject to the provisions of this section, the export of any commodity listed on the Commodity Control List to any destination for which a validated license is not required by the information set forth in the column titled "Validated License Required for Country Groups Shown Below." One or more country group symbols are entered in the column referred to above indicating that a validated license is required for any destination in that country group. If the symbol for the country group which includes the destination of a proposed export is listed, a validated export license is required and General License G-DEST is inapplicable. Conversely, if the country group symbol which includes the proposed destination is not shown in that column, then the export may be made under the provisions of General License G-DEST. (See § 770.9 of this subchapter for regulations relating to shipments transiting Country Group Y or Z en route to another country.)

(b) *Commodity Control List provisions.* If information contained in a particular entry of the Commodity Control List (Supplement No. 1 to § 799.1) modifies or alters any provisions of General License *G-DEST*, the provisions contained in the Commodity Control List shall govern.

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970, as amended by Amdt. 34, 37 FR 5623, Mar. 17, 1972; 48 FR 20900, May 10, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.4 General License GIT; intransit shipments.

(a) *Scope.* [4] (1) A general license designated GIT is established, authorizing, subject to the provisions of this section, the export from the United States of commodities which originate in one foreign country and are destined to another foreign country: *Provided,* That such commodities are moving in transit [5] through the United States under a Transportation and Exportation (T. & E.) customs entry or an Immediate (I.E.) customs entry made at a U.S. Customs Office.

(2) Only those exports of foreign origin which, if of United States origin, could be made to Country Group S, W, or Y under a general license may be exported to those destinations under General License *GIT*. Only those exports of foreign origin which, if of United States origin, could be made to Country Group Y under a general license may be exported to Country Group Z (excluding Cuba) under General License *GIT*.

(3) Commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter) may not be exported to Country Group Q or the People's Republic of China under this General License GIT.

(4) "Commodities which originate in a foreign country" includes not only commodities grown, produced or manufactured in a foreign country, but also those commodities originally grown, produced, or manufactured in the United States, so altered by further processing, manufacture, or assembly in a foreign country that they have either been substantially enhanced in value, or have lost their original identity with respect to form.

(b) *Shipments excepted from the provisions of General License GIT.* In addition to the prohibited shipments listed under § 771.2(c) the following may not be exported or reexported from the United States under General License GIT:

(1) Commodities shipped to the United States under the provisions of International Import Certificate, Form DIB—645P or FC-826;

(2) [Reserved]

(3) Commodities destined for the Republic of South Africa; and

(4) Horses for export by sea.

(c) *Shipments originating in Canada.* (1) The provisions of general license GIT are applicable, as modified herein, to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the origin of the commodities. For each such shipment, the customs office at the U.S. port of export shall require a copy of Form B-13, Canadian Customs Entry, certified or stamped by the Canadian customs authorities, except where the shipment is made under a validated U.S. export license or applicable U.S. general license other than general license GIT, or is valued at less than $50.

(2) The commodity description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of such shipment must be the same on a required Form

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[4] See § 770.5 regarding shipments moving in transit via the United States without unloading and § 772.8(a) for export license application requirements for intransit shipments where General License GIT is not applicable.

[5] A commodity withdrawn from a bonded warehouse in the United States under a "withdrawal for export" customs entry is considered as "moving in transit" within the meaning of General License GIT. It is not considered as "moving in transit" if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

B-13, as on Commerce Form 7513,[6] or when Form 7513 is not required, must be the same as on Customs Form 7512.[6] When there is a material difference, a corrected Form B-13 authorizing the shipment is required.

(3) Any parties to the export shall submit any further proof that the customs officer at the U.S. port of entry or the port of export may require to enable him to determine that general license GIT applies, including the fact that the destination of the shipment is properly authorized by the Canadian authorities. An export shall not be cleared for shipment by the customs officer at the U.S. port of export under general license GIT unless all provisions of this general license have been complied with.

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970, as amended by Amdt. 20, 36 FR 8367, May 5, 1971; Amdt. 50, 37 FR 21309, Oct. 7, 1972; 42 FR 55887, Oct. 20, 1977; 45 FR 1597, Jan. 8, 1980; 46 FR 38349, July 27, 1981; 46 FR 62837, Dec. 29, 1981; 48 FR 53065, Nov. 23, 1983; 51 FR 12839, Apr. 16, 1986; 52 FR 31754, Aug. 24, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 33897, Aug. 20, 1990]

§ 771.5 General License GLV; shipments of limited value.

(a) *Scope.* A general license designated GLV is established subject to the provisions of this § 771.5, authorizing the export of any commodities on the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter), as follows:

(1) To a destination in Country Group T or V, provided that the net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group T or V in the "GLV $ Value Limit" paragraph for that entry;

(2) To a destination in Country Group Q, provided that the net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group Q in the "GLV $ Value Limit" paragraph for that entry;

(3) From the U.S. Virgin Island to the British Virgin Islands, provided that—

(i) The net value of the commodities included in the same order and controlled under the same entry on the Commodity Control List does not exceed the amount specified for Country Group T in the "GLV $ Value Limit" paragraph for that entry; or

(ii) The net value of the shipment does not exceed $500; whichever is greater.

(b) *Definitions*—(1) *Order.* The term "order" as used in this § 771.5 means a communication from a person in a foreign country or that person's communication from a person in a foreign country or that person's representative expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be presented for export under General License GLV.

(2) *Net value for GLV shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the Commodity Control List, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of non-reusable containers in which the commodity is being exported may be excluded. Where the total value of the non-reusable containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under General License GLV, shall indicate the "net value" of the contained commodity immediately below the description of the commodity.

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[6] The complete names of these forms are: Commerce Form 7513, "Shipper's Export Declaration for Intransit Goods"; Customs Form 7512, "Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit."

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner shall be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(c) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for inclusion in a GLV shipment, orders must meet the following criteria:

(i) *Order must not exceed the applicable GLV dollar value limits.* An order is eligible for shipment under General License GLV when the "net value" of the commodities controlled under the same entry on the Commodity Control List does not exceed the amount specified in the "GLV $ Value Limit" paragraph for that entry. A GLV shipment may include more than one eligible order because GLV eligibility is based on the "net value" of the commodities in each order, instead of the "net value" of the commodities in the shipment.

(ii) *Orders shall not be split to meet the applicable GLV dollar limits.* An order that exceeds the applicable GLV dollar value limit shall not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable GLV dollar value limit. However, an order that meet all the GLV eligibility requirements, including the applicable GLV dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees shall not, either collectively or individually, structure or adjust orders to meet the applicable GLV dollar value limits.

(2) *Restriction on number of GLV orders.* An exporter shall not ship more than twelve orders per calendar year to the same ultimate consignee or intermediate consignee pursuant to the provisions of this § 771.5. This twelve order per year limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the twelve orders per year limit must not be exceeded.

(3) *Orders where two or more GLV dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the Commodity Control List. In this case, the net value of the entire order may exceed the GLV dollar value for any single entry on the commodity Control List. However, the net value of the commodities controlled under each Commodity Control List entry shall not exceed the GLV dollar value limit specified for that entry.

Example: An order includes commodities valued at $8,000. The order consists of commodities controlled under two Commodity Control List entries, 1522A and 1565A. Commodities in the order controlled under 1522A are valued at $3,000 while those controlled under 1565A are valued at $5,000. Since the net value of the commodities controlled under each entry falls within the GLV dollar value limits applicable to that entry, the order may be shipped under General License GLV.

(4) *Prohibition against evasion of validated export license requirements.* Any device involving the use of General License GLV to evade validated export license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable GLV dollar value limits, as prohibited by paragraphs (c)(1)(ii) and (c)(1)(iii) of this section.

(d) *Exceptions.* (1) The provisions of § 771.5 do not apply to the commodities listed in Supplement No. 2 to Part 777 unless, in addition to meeting the other requirements of § 771.5, the exporter, prior to exporting such commodity, has assembled the documentary evidence described in § 771.16 establishing that commodity was not produced from a Naval Petroleum Reserve; and (2) General License GLV may not be used to export any refined petroleum products or crude oil listed in ECCNs 4781B 4782B, 4783B, or 4784B, to the Republic of South Africa.

(e) *Special provision.* In addition to the general license designation GLV, the Export Control Commodity Number, which in this case identifies a commodity that is eligible to be shipped under General License *GLV*, shall be shown in parentheses immediately below the Schedule B Number on the SED.

(f) *Recordkeeping requirements.* Exporters must keep records of all shipments made under General License GLV in accordance with the provisions of § 787.13 of this subchapter. These records must include sufficient information to permit the Bureau of Export Administration to verify the eligibility of each order that was shipped under General License GLV.

[35 FR 9119, June 12, 1970, as amended at 42 FR 18397, Apr. 7, 1977; 45 FR 43139, June 25, 1980; 46 FR 38349, July 27, 1981; 47 FR 4677, Feb. 2, 1982; 47 FR 58123, Dec. 29, 1982; 48 FR 53065, Nov. 23, 1983; 51 FR 12839, Apr. 16, 1986; 52 FR 2106, Jan. 20, 1987; 53 FR 26048, July 11, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 33897, Aug. 20, 1990; 55 FR 40824, Oct. 5, 1990]

§ 771.6 General License baggage.

(a) *Scope.* A general license designated BAGGAGE is established, subject to the provisions of this § 771.6, authorizing individuals leaving the United States to take to any destination, as personal baggage, accompanied or unaccompanied, the classes of commodities listed in paragraphs (b) (1), (2), (3), and (4) of this section, provided the commodities are owned by such individuals or members of their immediate families on the dates they depart from the United States; are intended for and necessary and appropriate for the use of such individuals or members of their immediate families; and are not intended for sale. Accompanied baggage is that taken by an individual departing from the United States on the same carrier on which the individual departs. Unaccompanied baggage is baggage sent from the United States on a carrier other than hat on which an individual departs. Unaccompanied shipments under this eneral license shall be clearly marked BAGGAGE." Shipments of unaccomanied baggage may be made at the ime of, or within a reasonable time rior to or after departure of the congnee or owner from the United States. Items of personal baggage identified by Code Letter "A", "B", "C", or "M" following the Export Control Commodity Number (ECCN) on the Commodity Control List ((CCL) Supplement No. 1 to § 799.1) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities identified by the code letters "A", "B", "C", or "M" following the ECCN on the CCL may not be exported under this general license to Country Groups Q, S, W, Y, or Z, or to any destination by nationals of Country Groups Q, S, W, Y, or Z. Commodities identified by the code letters "A" or "M" may not be exported under this general license to the People's Republic of China, or to any destination by nationals of the People's Republic of China. This general license may not be used by members of crews of vessels or aircraft (see § 771.11 for General License CREW).

(b) *Definitions*—(1) *Personal effects.* Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) *Household effects.* Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.

(3) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, avocation, or hobby of the traveler.

(c) *Special provisions—Shotguns and shotgun shells.* (1) A U.S. citizen or a permanent resident alien leaving the United States may take (export) shotguns with a barrel length of 18 inches or over and shotgun shells under General License Baggage, subject to the following limitations:

(i) Not more than three shotguns and not more than 1,000 shotgun shells may be taken on any one trip;

(ii) The shotguns and shotgun shells must be with the person's baggage, whether accompanied or unaccompanied, but they may not be mailed;

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. (Accordingly, shotguns may not be exported permanently under this General License Baggage. All shotguns and unused shotgun shells must be returned to the United States.)

(2) A nonresident alien leaving the United States may take (reexport) under General License Baggage only such shotguns and shotgun shells as he brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).[8]

(d) *Customs authority to limit or prohibit shipments.* Customs officers shall limit or prohibit the export of any commodity(ies) under General License Baggage if the kind or quantity is in excess of the limitations set forth in this section, or if they shall have cause to suspect that such export is being made for the purpose or with intent to evade any of the Export Administration Regulations.

[35 FR 9121, June 12, 1970, as amended by Amdt. 13, 35 FR 19984, Dec. 31, 1970; Amdt. 14, 36 FR 3348, Feb. 23, 1971; 43 FR 24517, June 6, 1978; 51 FR 12839, Apr. 16, 1986; 51 FR 25684, July 16, 1986; 51 FR 26154, July 21, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.7 [Reserved]

§ 771.8 General License G-COM; certain shipments to cooperating countries.

(a) *Scope.* A general license designated G-COM is established, authorizing exports to the COCOM participating countries and Austria, Finland, Singapore, Sweden, and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments.

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Australia, Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Exports to these countries may be made under G-COM *only* when intended for consumption within an eligible country or for reexport among these countries.

(c) *Eligible commodities.* The commodities eligible for export under this general license are described in the Advisory Notes in the Commodity Control List that indicate likelihood of approval for Country Groups QWY. (The Advisory Notes for the People's Republic of China and Notes indicating "favorable consideration" are *not* applicable to G-COM eligibility.) End-use and quantity restrictions in the Advisory Notes may be disregarded in determining whether G-COM may be used. However, certain advisory notes may contain specific restrictions on the applicability of G-COM. When the note is excluded from G-COM eligibility, the exclusion will be described by the phrase "NOT ELIGIBLE FOR GENERAL LICENSE G-COM." Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

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[8] 27 CFR 178.115(d) provides for the following:

(d) Firearms and ammunition are not imported into the United States, and the provisions of this subpart shall not apply, when such firearms and ammunition are brought into the United States by:

(1) A nonresident of the United States for legitimate hunting or lawful sporting purposes, and such firearms and such ammunition as remains following such shooting activity are to be taken back out of the territorial limits of the United States by such person upon conclusion of the shooting activity;

(2) Foreign military personnel on official assignment to the United States who bring such firearms or ammunition into the United States for their exclusive use while on official duty in the United States;

(3) Official representatives of foreign governments who are accredited to the U.S. Government or are enroute to or from other countries to which accredited;

(4) Officials of foreign governments and distinguished foreign visitors who have been so designated by the Department of State; and

(5) Foreign law enforcement officers of friendly foreign governments entering the United States on official law enforcement business.

[50 FR 38512, Sept. 23, 1985, as amended at 51 FR 28693, Aug. 11, 1986; 52 FR 26954, July 17, 1987; 52 FR 32122, Aug. 26, 1987; 52 FR 32539, Aug. 28, 1987; 52 FR 39216, Oct. 21, 1987; 52 FR 43852, Nov. 17, 1987; 52 FR 45619, Dec. 1, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 21937, May 22, 1989]

§ 771.9 General License Ship Stores.

(a) *Scope.* A general license designated *Ship Stores* is established, subject to the provisions of §771.9, authorizing the export, under certain circumstances, of usual and reasonable kinds and quantities of the commodities indicated in paragraphs (a) (1) and (2) of this section, provided such commodities are not intended for unlading in a foreign country and are not exported under a bill of lading as cargo.[9] Exports under this general license may be made on vessels of any registry, except as provided for in paragraph (a)(3) of this section, departing from the United States. Additionally, exports under this general license may be made on lighters servicing vessels too large to enter a U.S. port to allow for the refueling of super tankers, *e.g.*, Ultra Large Crude Carriers (ULCC) and Very Large Crude Carriers (VLCC), provided such vessels are lading or unlading, in U.S. or international waters, cargo destined for or coming from a U.S. port.

(1) Dunnage necessary and appropriate to stow or secure cargo on the outgoing and immediate return voyage of an exporting carrier, when exported solely for use as dunnage, may be exported to any destination under this General License *Ship Stores.*

(2) The items listed below may be exported subject to the conditions set forth in paragraph (b) of this section for use or consumption on board a vessel of any registry during the outgoing and immediate return voyage:

(i) Bunker fuel, except crude petroleum and blends of unrefined crude petroleum with a petroleum product, provided it is not of Naval Petroleum Reserve origin or derivation;

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, provided they are not of Naval Petroleum Reserves origin or derivation if listed in Supplement No. 3 to Part 777;

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles; and

(vi) Saloon stores or supplies.

(3) Equipment and spare parts for permanent use on a vessel may be exported for use on board a vessel of any registry, when necessary for the proper operation of such vessel, except a vessel registered in Country Group Q, W, Y, or Z, or the People's Republic of China or owned or controlled by, or under charter or lease to any of these countries or their nationals. Notwithstanding the above, equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported on board a vessel registered in, owned or controlled by, or under charter or lease to a country in Country Group Q, W or Y, or the People's Republic of China or a national of such country, if the equipment or spare parts are authorized to be exported to a destination in Country Group Q, W, or Y, or the People's Republic of China under General License *G-DEST.* In addition, other equipment and services for necessary repair to fishing and fishery support vessels of QWY countries or Cuba, or the People's Republic of China may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(b) *Restrictions on exports of petroleum and petroleum products.* Crude petroleum and blends of unrefined crude petroleum with petroleum products may not be exported under this general license. Export of any petroleum product listed in Supplement No. 3 to Part 777 may be made under this general license provided the exporter, prior to the export of such commodity, has assembled documentary evidence establishing that the commodity was not produced or derived from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 777.6(e)(2), or it may consist of other documentation establising the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 787.13(e), and is put on notice that in appropriate cases, audits of exporters' files may be conducted to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 3 to Part 777 that was made under General License *SHIP STORES*. Any petroleum commodity identified in Supplement No. 3 to Part 777 which does not meet the conditions for export under General License *SHIP STORES* may be exported only under a validated license issued pursuant to § 777.6(d)(3). Crude petroleum may be exported only under a validated license issued pursuant to § 777.6(d)(1).

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[9] Where a validated license is required, see §§ 772.4 and 776.9.

[46 FR 32432, June 23, 1981, as amended at 46 FR 49110, Oct. 6, 1981; 48 FR 53065, Nov. 23, 1983; 51 FR 12839, Apr. 16, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.10 General License PLANE STORES.

(a) *Scope.* A general license designated PLANE STORES is established subject to the provisions of this section, authorizing the export on aircraft of U.S. or foreign registry departing from the United States, of usual and reasonable kinds and quantities of the commodities indicated in paragraphs (a) (1) and (2) of this section, provided such commodities are not intended for unlading in a foreign country and are not exported under a bill of lading as cargo.[10]

(1) Dunnage necessary and appropriate to stow or secure cargo on the outgoing and immediate return flight of an exporting carrier, when exported solely for use as dunnage, may be exported to any destination under this General License *PLANE STORES*.

(2) The following commodities may be exported subject to the conditions set forth in paragraph (b) of this section for use or consumption on board an aircraft of any registry during the outgoing and immediate return flight:

(i) Fuel which is of non-Naval Petroleum Reserves origin or derivation;

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, provided that any commodities which are listed in Supplement No. 3 to Part 777 of this chapter hereof are of non-Naval Petroleum Reserves origin or derivation.

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles; and

(vi) Saloon stores or supplies.

(3) Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group Q, W, Y, or Z (excluding Cuba), or the People's Republic of China or a national of any of these countries.

Notwithstanding the above, equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported on board an aircraft registered in, owned or controlled by, or under charter or lease to a country in Country Group Q, W, or Y or the People's Republic of China or a national of such country if the equipment or spare parts are authorized to be exported to a destination in Country Group Q, W, or Y or the People's Republic of China under General License G-DEST.

(b) *Restrictions on petroleum and petroleum products for use on aircraft.*

(1) [Reserved]

(2) No export of any petroleum product listed in Supplement No. 3 to Part 777 may be made under this general license unless the exporter, prior to the export of such commodity, has assembled documentary evidence establishing that the commodity was not produced or derived from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 777.6(e)(2), or it

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[10] Where a validated license is required, see §§ 772.4 and 776.9.

may consist of other documentation establishing the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 787.13(e), and is put on notice that in appropriate cases, audits of exporters' files may be conducted to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 3 to Part 777, that was made under General License *PLANE STORES.*

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970, as amended at 40 FR 21931, May 20, 1975; 42 FR 12852, Mar. 7, 1977; 42 FR 18397, Apr. 7, 1977; 42 FR 55886, Oct. 20, 1977; 43 FR 58553, Dec. 15, 1978; 45 FR 1597, Jan. 8, 1980; 45 FR 6362, Jan. 28, 1980; 46 FR 49110, Oct. 6, 1981; 46 FR 50937, Oct. 16, 1981; 48 FR 53065, Nov. 23, 1983; 49 FR 19811, May 10, 1984; 51 FR 12839, Apr. 16, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.11 General License Crew.

(a) *Scope.* A general license designated Crew is established, authorizing, subject to the provisions of this section, a member of the crew on an exporting carrier to export among his effects the following classes of commodities:

(1) *Personal effects.* Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and other personal effects and their containers. Shotguns of a barrel length of 18 inches or over and shotgun shells as limited by § 771.6(c)(1) may be exported by a U.S. citizen or a permanent resident alien under this General License Crew, but all shotguns and unused shotgun shells must be returned to the United States on each return trip. Crew members who are nonresident aliens may export shotguns and ammunition subject to the provisions of § 771.6(c)(2).

(2) *Household effects.* Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.

(b) *Limitation.* The personal and household effects may include only those articles (1) owned by such crew member; (2) intended, necessary, and appropriate for use by him or his immediate family; (3) in his possession at the time of his departure from the United States; (4) not intended for resale; and (5) not exported under a bill of lading as cargo.

[43 FR 24517, June 6, 1978, as amended at 45 FR 1598, Jan. 8, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.12 General License RCS; shipments to U.S. or Canadian vessels, planes, and airline installations or agents.

(a) *Scope.* A general license designated RCS is established authorizing, subject to the provisions of this section, exports to any destination except Country Groups Y and Z (excluding Cuba).

(b) *Exports to vessels or planes of U.S. or Canadian registry.* Export may be made of the commodities set forth in paragraph (d) of this section, for use by or on a specific vessel or plane of United States or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Country Group Y or Z (excluding Cuba), provided that such commodities are: [11]

(1) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(2) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(3) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight;

(4) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is *not* required when any of the commodities, other than fuel, is exported by *U.S. airlines* to their own aircraft abroad for their use.

(c) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports of the commodities set forth in paragraph (d) of this section, except fuel, may be made to a U.S. or Canadian airline's[12] installation or agent in any foreign destination except Country Group Y or Z (excluding Cuba) provided such commodities are:

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[11] Where a validated license is required, see §§ 772.4 and 767.9.

(1) Ordered by a United States or Canadian airline and consigned to its own installation or agent abroad;

(2) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, a Country Group Y or Z country (excluding Cuba) or a national of such country;

(3) In usual and reasonable kinds and quantities; and

(4) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is *not* required when any of these commodities is exported by *U.S. airlines* to their own installations and agents abroad for use in their aircraft operations.

(d) *Applicable commodities.* This general license applies to the commodities listed below, subject to the provision in paragraphs (b) and (c) of this section:

(1) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation;

(2) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum; *Provided,* That any commodities which are listed in Supplement No. 3 to Part 777 of this chapter hereof are of non-Naval Petroleum Reserves origin or derivation.

(3) Medical and surgical supplies;

(4) Food stores;

(5) Slop chest articles;

(6) Saloon stores or supplies; and

(7) Equipment and spare parts.

(e) *Restrictions on petroleum and petroleum products.* Crude petroleum and blends of unrefined crude petroleum with petroleum products may not be exported under this general license. Export of any petroleum product listed in Supplement No. 3 to Part 777 may be made under this general license provided the exporter, prior to the export of such commodity, has assembled documentary evidence establishing that the commodity was not produced or derived from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 777.6(e)(2), or it may consist of other documentation establishing the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 787.13(e), and is put on notice that in appropriate cases, audits of exporters' files may be conducted to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 3 to Part 777, that was made under General License *RCS.* Any other petroleum commodity listed in Supplement No. 3 to Part 777, which does not meet the conditions for export under General License *RCS,* may be exported only under a validated license issued pursuant to § 777.6(d)(3). Crude petroleum may be exported only under a validated license issued pursuant to § 777.6(d)(1).

[35 FR 9119, June 12, 1970, as amended at 40 FR 50707, Oct. 31, 1975; 42 FR 18398, Apr. 7, 1977; 46 FR 32433, June 23, 1981; 46 FR 49110, Oct. 6, 1981; 46 FR 62837, Dec. 29, 1981; 51 FR 12839, Apr. 16, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.13 General License GUS; shipments to personnel and agencies of the U.S. Government.

(a) *Scope.* A general license designated GUS is established, authorizing, subject to the provisions of this section, exports to any destination as follows:

(1) *Commodities for personal use.* Commodities in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants in each case. Commodities for personal use include household effects, food, beverages, and other daily necessities.

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[12] See § 770.2 for definition of United States and Canadian airlines.

(2) *Commodities for official use.* Any commodity consigned to and for the official use of any agency of the U.S. Government.

(b) *Definition of U.S. Government agency.* The term "agency of the U.S. Government" includes all civilian and military departments, branches, missions, Government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made under this general license to these non-Government national or international agencies.

(c) *Petroleum exports.* The provisions of this section do not apply to the products listed in Supplement No. 3 to Part 777 unless, in addition to meeting the other requirements of § 771.13, the exporter, prior to exporting such products, has assembled the documentary evidence described in § 771.16 establishing that the product was not derived from a Naval Petroleum Reserve. Crude petroleum may be exported only under a validated license issued pursuant to § 777.6(d)(1).

[35 FR 9119, June 12, 1970, as amended at 46 FR 49110, Oct. 6, 1981. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.14 General License GCG; shipments to agencies of cooperating governments.

(a) Scope. A general license designated GCG is established subject to the provisions of § 771.14, authorizing exports to any destination as follows:

(1) Commodities for official use within national territory. Any commodity consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government.

(2) Diplomatic and consular missions. Any commodity consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Groups T and V.

(b) Definition of Cooperating Government Agency. The term "agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of the COCOM participating countries and the national governments of Austria, Finland, Korea (Republic of), Singapore, Sweden, and Switzerland.

(c) Petroleum Exports. The provisions of this § 771.14 do not apply to the products listed in Supplement No. 3 to Part 777 unless, in addition to meeting the other requirements of § 771.14, the exporter, prior to exporting such products, has assembled the documentary evidence described in § 771.16 establishing that the product was not derived from a Naval Petroleum Reserve. Crude petroleum may be exported only under a validated license issued pursuant to § 777.6(d)(1).

(d) Exclusions. (1) No export prohibited by § 771.2(c) may be made under this general license.

(2) No supercomputers may be exported under this general license.

(3) No crime control and detection instruments and equipment may be exported under this general license except to COCOM participating countries.

[52 FR 5275, Feb. 20, 1987; 52 FR 6649, Mar. 4, 1987; 52 FR 10741, Apr. 3, 1987, as amended at 52 FR 32539, Aug. 28, 1987; 52 FR 39216, Oct. 21, 1987; 52 FR 45619, Dec. 1, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 53 FR 45899, Nov. 15, 1988; 54 FR 40862, Oct. 4, 1989; 55 FR 50316, Dec. 6, 1990]

§ 771.15 General License GTF-U.S.; goods imported for display at U.S. exhibitions or trade fairs.

(a) *Scope.* A general license designated GTF-US is established, authorizing, subject to the provisions of this section, the export of commodities that (1) were imported into the United States for display at an exhibition or trade fair, and (2) were either entered under bond or permitted temporary free importation under bond providing for their export and are being exported in accordance with the terms of such bond.

(b) *Return to country from which imported.* Such commodities may be returned to the country from which imported into the United States. However, no commodities may be returned to a Country Group Z unless the United States Government had licensed the import from that country.

(c) *Exports to other destinations.* Such commodities may be exported to any destination other than the country from which imported except:

(1) Commodities imported into the United States pursuant to an International Import Certificate,

(2) Exports to Country Group S, W, Y, or Z destinations, or

(3) Exports to Country Group Q or the People's Republic of China of commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 of § 799.1 of this subchapter).

[35 FR 9419, June 12, 1970, as amended by Amdt. 20, 36 FR 8367, May 5, 1971; Amdt. 47, 37 FR 17705, Aug. 30, 1972; 45 FR 1598, Jan. 8, 1980; 46 FR 38349, July 27, 1981; 46 FR 62837, Dec. 29, 1981; 47 FR 11246, Mar. 16, 1982; 48 FR 53065, Nov. 23, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.16 General license G-NNR; shipments of certain Non-Naval reserve petroleum commodities.

A general license designated G-NNR is established, subject to the provisions of § 771.16, authorizing the export of any commodity listed in Petroleum Commodity Groups B, C, D, E, F, G, K, L, M, N and Q (see Supplement No. 2 to Part 777) to Canada, any destination in Country Groups Q, T, W and Y, and to any destination in Country Group V (*except* that only commodities listed in ECCN 4778B may be exported under this general license to South Africa), provided that both of the following conditions are met:

(a) The commodity is not included in (1) an entry on the Commodity Control List for which the Export Control Commodity number is followed by the code letter "A"; or (2) Exports Control Commodity number 3(6)(B); and

(b) Prior to the export of a commodity under this General License *G-NNR*, the exporter must have assembled documentary evidence establishing that the commodity was not produced from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 777.6(e)(2), or it may consist of other documentation establishing the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 787.13(e), and is put on notice that in appropriate cases, audits may be conducted of exporters' records to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 2 to Part 777, that was made under General License *G-NNR*. Any commodity listed in Petroleum Commodity Group B, C, D, E, F, G, K, L, M, N, or Q which does not meet the conditions for export under General License *G-NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, or GUS*, may be exported only under a validated license issued pursuant to § 777.6(d)(3).

(The recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0625-0154)

[42 FR 1223, Jan. 6, 1977, as amended at 42 FR 18398, Apr. 7, 1977; 46 FR 49110, Oct. 6, 1981; 48 FR 53085, Nov. 23, 1983; 50 FR 41133, Oct. 9, 1985; 51 FR 25360, July 14, 1986; 52 FR 2106, Jan. 20, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 25821, June 25, 1990; 55 FR 33897, Aug. 20, 1990]

§ 771.17 General license GLR; return or replacement of certain commodities.

A General License GLR is established, subject to the provisions of § 771.17, authorizing the return or repair of commodities and the replacement of parts, subject to the following provisions:

(a) *Commodities sent to the United States for servicing*—(1) *Definition.* As used in this section, "servicing" means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, *e.g.*, as to accuracy, capability, performance, or productivity of the commodity as originally authorized for export or reexport.

(2) *Commodities imported from Country Group T or V, except Iran or*

Syria. (i) Any commodity sent to the United States from Country Group T or V for servicing may be exported under this general license to the country from which it was sent, provided that the use of this general license is not precluded by the general prohibitions that apply to all general licenses as listed in § 771.2(c).

(ii) When the serviced commodity is exported, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item sent to the United States for use in connection with the servicing.

(3) *Commodities imported from Country Group Q, W, or Y.* (i) Any U.S.-origin commodity previously exported from the United States to a consignee in Country Group Q, W, or Y under a validated export license or authorized by the Office of Export Licensing to be reexported to a consignee in Country Group Q, W, or Y, that is returned to the United States for servicing may be exported under this general license to the country from which it was sent, provided the following conditions are met:

(A) The U.S. exporter making the shipment under this general license is the same person or firm to whom the original validated export license or reexport authorization was issued;

(B) The end-use and the end-user of the serviced commodity and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the validated export license or reexport authorization, shall not have changed;

(C) The use of this general license is not precluded by the prohibitions that apply to all general licenses as listed in § 771.2(c); and

(D) The commodity being serviced is not one that has been disposed of by U.S. Government Agencies under foreign excess property disposal programs.

(ii) When the serviced commodity is xported, it may include any replacement or rebuilt parts necessary to its epair and may be accompanied by ny spare part, tool, accessory, or ther item sent to the United States for use in connection with the servicing.

(4) *Reporting requirements.* The U.S. exporter servicing U.S.-origin commodities imported from Country Group Q, W, or Y shall report (OMB approval No. 0625-0066) each export of such serviced commodity to the Office of Export Licensing at the address in § 771.2(h). The report must be submitted within two weeks of exportation. It shall be by letter and shall include:

(i) A description of the commodity;

(ii) The nature of the servicing;

(iii) The name and address of the consignee; and

(iv) The license number of the validated export license or reexport authorization that authorized the original export or reexport of the commodity to the consignee.

NOTE: See § 773.7 for provisions relating to the servicing by foreign-based service facilities of commodities previously exported from the United States.

(5) *Country Group S or Z.* No commodities may be exported to Country Group S or Z under § 771.17(a).

(b) [Reserved]

(c) *Unwanted Foreign-Origin Commodities.* A foreign-origin commodity may be returned under this general license to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. This procedure applies to all Country Groups except S and Z.

(d) *Return of shipments refused entry.* Shipments of commodities refused entry by the Bureau of Customs, the Food and Drug Administration, or other U.S. Government agency may be returned under this general license to the country of origin, except (1) a destination in Country Group S or Z, or (2) a destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department unless such return is licensed or otherwise authorized by the Treasury Department, Foreign Assets Control.

(e) *One-for-one replacement of parts.* Subject to the following conditions, parts may be exported under this general license for use as one-for-one replacements in previously exported equipment.

(1) *Definition.* The term "replacement parts" means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies as defined in § 773.7(a)(9), but does not include test instruments or operating supplies.) Commodities that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts within the meaning of this general license.

(2) *Exclusions.* (i) No replacement parts may be exported under this provision to repair a commodity exported under a validated export license *if* that license included a condition that any subsequent replacement parts may be exported only under a validated license.

(ii) No parts may be exported under this provision to be held in stock abroad as spare parts for future use, except that parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No replacement part may be exported under this general license to any destination except the countries listed in Supplement No. 2 to Part 773 if the replacement is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 778.3.

(iv) No replacement part shall be exported under this general license if the replacement is to be incorporated into or used in any electronic, mechanical, or other device, as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications.

(v) No replacement part shall be exported under this general license to destinations other than NATO members, Japan, Australia, or New Zealand, if the replacement part is specially designed for use in crime control and detection instruments and equipment as described in § 776.14.

(vi) No replacement part shall be exported under this general license to Cuba, Iran, Syria, the People's Democratic Republic of Yemen, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an aircraft, helicopter, or national security controlled commodity.

(vii) The exclusions set forth in this paragraph (e)(2) do not apply to reexports to a foreign country of parts as one-for-one replacements in foreign origin products, if at the time the replacements are furnished, the foreign origin product is eligible for export to such country under any of the exceptions in § 776.12(a).

(3) *General conditions.* (i) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: Legally exported from the United States under either a general or a validated export license; legally reexported under a reexport authorization or permissive reexport; or made in a foreign country incorporating U.S. origin parts in compliance with the requirements of § 776.12. The conditions of the original license authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction (e.g., the validated export license number or general license symbol).

(ii) The parts to be replaced shall either be destroyed abroad or returned to the party who supplied the replacement parts, or to a foreign firm that is under the effective control of that party prior to, or promptly after, the shipment of the replacement parts. When a Shipper's Export Declaration is required, the exporter or his duly authorized agent shall place the appropriate portions of the following certification on the declaration form:

I (We) certify that the commodity(ies) described in this declaration is (are) being exported as one-for-one replacement parts under General License GLR. The defective or otherwise unusable part(s) that is (are being) replaced [(has been) (have been) (shall be promptly) returned to the United States] [(has been) (have been) (shall be promptly) returned to (name for foreign firm)] [(has been) (have been) (will be) destroyed abroad].

(f) *Replacements for defective or unacceptable U.S.-origin equipment.* Subject to the following general and special conditions, any commodity may be exported under the provisions of this general license to replace a defective or otherwise unusable (e.g., erroneously supplied) U.S.-origin commodity, except that no commodity shall be exported to a destination in Country Group S or Z, or Iran or Syria or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a country in Country Group S or Z or Iran, or a national of such country.

(1) *General conditions.* (i) No commodity shall be exported to replace equipment that is worn out from normal use, nor may any commodity be exported to be held in stock abroad as spare equipment for future use.

(ii) The commodity to be replaced shall have been previously exported in its present form under a validated export license or reexported under authorization granted by the Office of Export Licensing.

(iii) The replacement commodity shall not have improved the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the commodity as originally approved for export from the United States under a validated export license or for reexport under an authorization issued by the Office of Export Licensing.

(iv) No replacement equipment may be exported under this general license to any destination except the countries listed in Supplement No. 2 to Part 773 if the replacement is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in §§ 778.3 and 778.4; and

(v) No replacement of defective or otherwise unusable equipment shall be exported under this general license if the replacement is to be incorporated into or used in any electronic, mechanical, or other device, as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications.

(2) *Special conditions applicable to exports to Country Group T or V, except Iran or Syria.* In addition to the General Conditions set forth in paragraph (f)(1) of this section, the following apply to exports under this general license to a destination in Country Group T or V, except Iran or Syria.

(i) The commodity to be replaced shall either be destroyed abroad or returned to the United States or to a foreign firm that is under the effective control of the U.S. exporter that is providing the replacement equipment prior to, or promptly after, the replacement commodity is exported from the United States;

(ii) The defective or otherwise unusable commodity shall be replaced free of charge, except for transportation and labor charges;

(iii) Any export made under paragraph (f)(2) shall be cleared in accordance with Part 786, except that the exporter or his duly authorized agent shall place the following certification, substituting the appropriate parenthetical phrases, if applicable, on the Shipper's Export Declaration:

I(We) certify that the commodity(ies) described on this Declaration is(are) being exported under the provisions of General License *GLR* to replace defective or otherwise unusable U.S.-origin equipment previously (exported from the United States under validated export license number ——) (reexported from (*name of country*) under OEL Authorization No.——). I(We) further certify that the defective or otherwise unusable equipment [(has been) (shall be promptly) returned to the United States]; [(has been) (shall be promptly) returned to (name of foreign firm)]; [(has been) (will be) destroyed abroad].

(3) *Special conditions applicable to exports to Country Groups Q, W, and Y.* In addition to the General Conditions set forth in paragraph (f)(1) of this section, the following apply to exports under this general license to a destination in Country Group Q, W, or Y.

(i) The commodity to be replaced shall be either destroyed or returned to the United States or to a foreign firm in Country Group T or V, except Iran or Syria that is under the effective control of the U.S. exporter that is providing the replacement equipment. The destruction or return shall be effected prior to, or promptly after, the replacement is exported from the United States;

(ii) The defective or otherwise unusable commodity shall be replaced free of charge, except for transportation and labor charges, within the warranty period or within 12 months of its delivery to the ultimate consignee in the country of destination, whichever is shorter;

(iii) Any export made under paragraph (f) of this section shall be cleared in accordance with Part 786, except that the exporter of his duly authorized agent shall place the following certification, substituting the appropriate parenthetical phrases, if applicable, on the Shipper's Export Declaration:

I(We) certify that the commodity(ies) described on this Declaration is (are) being exported under the provisions of General License *GLR* to replace defective or otherwise unusable U.S.-origin equipment previously (exported from the United States under validated export license number ——) (reexported from (*name of country*) under OEL Authorization No. ——). I(We) further certify that the defective or otherwise unusable equipment [(has been) (shall be promptly) returned to the United States)]; [(has been) (shall be promptly) returned to (name of foreign firm)]; [(has been) (will be) destroyed abroad].

(iv) A copy of each Shipper's Export Declaration covering an export under the provisions of this § 771.17(f)(3) to a destination in Country Group Q, W, or Y shall be sent to the Office of Export Licensing at the address in § 771.2(h), at the same time copies are presented to the carrier as required by the provisions of Part 786.

[35 FR 9125, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 771.17, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 771.18 General license GIFT; shipments of gift parcels.

(a) *Scope.* (1) A general license designated *GIFT* is established, subject to the provisions of this section, authorizing the export of gift parcels by an individual in the United States (donor) addressed to an individual, or a religious, charitable, or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, the payment by the donee of any handling charges or of any fees levied by the importing country (*e.g.,* import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of "gift parcel." [13]

(2) A gift parcel, within the context of this general license, does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, unless authorized by one of the other general licenses set forth in this part, must meet the requirements of a validated license, including the submission of an application for validated export license. (See § 772.8 regarding validated license exports of gift parcels.)

(3) An individual gift parcel may also be exported under any other ap-

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[13] Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words "U.S.A. Gift Parcel" on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate, or Embassy of the country concerned.

plicable general license, such as GLV or G-DEST, or any other procedure of the Office of Export Licensing that authorize the export of the commodities.

(b) *Commodity, value, and other limitations*—(1) Commodity limitations. To qualify for shipment as gifts, commodities must be:

(i) Not identified by the code letter "A," "B," "C," or "M" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter), and

(ii) Normally sent as gifts, and in quantities normally given as gifts between individuals. Goods such as food, toilet articles, and medicines and pharmaceuticals in dosage form may be included. Clothing is appropriate, except that export of military wearing apparel to Country Group Q, S, W, Y, or Z under this general license is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed. Gold bullion, gold taels, and gold bars are likewise prohibited as are items intended for resale.

Example. A watch or piece of jewlery is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for GIFT because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this general license, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given be- ween individuals.

(iii) Acceptable in type and quantity y the recipient country for import as ifts. Commodities exceeding the mport limits may not be included in ift parcels.

(2) *Dollar-value Limitations.* The ombined total domestic retail value of l commodities included in a gift arcel shall not exceed $400, except r gift shipments to Cuba where the lue shall not exceed $200.

(3) Frequency of shipment. Not ore than one gift parcel may be sent om the same donor to the same nee in any one calendar month. Par- s seeking authorization to exceed s limit due to compelling humani- ian concerns (e.g., gifts of medicine to relatives) should submit an Application for Export License (BXA-622P) with complete justification.

(4) *How to export.* (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation "GIFT-Export License Not Required" written on the addressee side of the package and the word "Gift" written on any required customs declaration.

(iii) A gift parcel sent via parcel post shall conform with applicable post office regulations as to size, weight, and permissible contents. A gift parcel sent via air express, air cargo, or air freight, is not limited as to size or weight by the provisions of this general license.

[35 FR 9119, June 12, 1970, as amended by Amdt. 14, 36 FR 3348, Feb. 23, 1971; Amdt. 47, 37 FR 17705, Aug. 30, 1972; 43 FR 10341, Mar. 13, 1978; 45 FR 1598, Jan. 8, 1980; 46 FR 38349, July 27, 1981; 46 FR 62837, Dec. 29, 1981; 47 FR 14695, 14696, Apr. 6, 1982; 48 FR 53065, Nov. 23, 1983; 51 FR 12839, Apr. 16, 1986; 52 FR 23027, 23029, June 17, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 19884, May 9, 1989]

§ 771.19 General license GATS; aircraft on temporary sojourn.

A general license designated GATS is established, subject to the provisions of this section, authorizing the departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad.

(a) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, *Provided*, That: (1) The aircraft has not been sold, leased or otherwise disposed of while in the United States; and (2) it does not carry from the United States any commodity for which export authorization has not been granted by the appropriate U.S. Government agency.

(b) *U.S. registered aircraft.* (1) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to Part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination: *Provided,* That:

(i) The aircraft does not depart for the purpose of sale, lease or other disposition of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(ii) The aircraft's U.S. registration will not be changed while abroad;

(iii) The aircraft is not to be used in any foreign military activity while abroad; and

(iv) The aircraft does not carry any commodity from the United States for which export authorization has not been granted by the appropriate U.S. Government agency.

(2) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except Country Groups S and Z (flights to these destinations require a validated license), *Provided,* That:

(i) The aircraft does not depart for the purpose of sale, lease or other disposition of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(ii) The aircraft's U.S. registration will not be changed while abroad;

(iii) The aircraft is not to be used in any foreign military activity while abroad;

(iv) The aircraft does not carry any commodity from the United States for which export authorization has not been granted by the appropriate U.S. Government agency; and

(v) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic fligh within a foreign country, the aircra may be operated by a pilot current licensed by that foreign country.

(c) *Request for authorization of no return; use of form BXA-699P.* Whe it is decided that a U.S. registered ai craft that departed the United State under authority of this General L cense GATS, or any of its equipmen parts, accessories, or components, wi be sold or leased abroad, or will not b returned to the United States for an other reason, a request for authoriza tion shall be submitted on a Form BXA-699P, Request to Dispose o Commodities or Technical Data Previ ously Exported, to the Office o Export Licensing at the address i § 771.2(h). (*See* § 774.3 for more information on reexport authorizations. Such requests shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination, and shall be accompanied by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination.

[43 FR 16713, Apr. 20, 1978, as amended a 45 FR 1598, Jan. 8, 1980; 45 FR 59302, Sept. 9, 1980; 46 FR 62837, Dec. 29, 1981; 47 FR 15109, Apr. 8, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 27160, June 28, 1989; 55 FR 40828, Oct. 5, 1990]

§ 771.20 General license G-CEU: certified end-users.

A general license designated G-CEU is established, authorizing exports to Certified End-Users of any eligible commodity that will be used by the Certified End-User (CEU).

(a) *Eligible end-users.* Commodities may be exported under General License G-CEU only to cooperating national government controlled enterprises included in Supplement 1 to Part 771. Cooperating governments are the governments of Finland, Sweden, Switzerland, and the countries participating in COCOM (see § 770.2). For the purposes of this general license, a controlled enterprise is any entity that is "controlled in fact" by a cooperating member government that performs commercial or utility, not governmental, functions.

(1) "Control in fact" consists of the authority or ability of a government to establish the general policies or to control the day-to-day operations of the entity.

(2) An entity will be presumed to be controlled in fact by a government, subject to rebuttal by competent evidence, when such government:

(i) Owns or controls more than 50 per cent of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraph (a)(2) (i), (ii), or (iii) of this section with regard to unincorporated entities.

(b) *Eligible countries.* Exports may be made to any CEU located in the national territory of any cooperating government, provided the commodities will be consigned to and for use by the CEU at a destination within such territory.

(c) *Commodity restrictions.* General License G-CEU may be used for export of any commodity on the Commodity Control List except supercomputers.

(d) *End-use restriction.* This procedure only authorizes a Certified End-User (1) to use the commodities obtained under General License G-CEU at its own facilities located in an eligible country, or (2) to dispose of the commodities to other Certified End-Users, subject to all G-CEU restrictions, except that a Certified End-User may incorporate U.S. parts, components, or materials received under General License G-CEU into foreign made end products for purposes of resale or reexport to eligible countries.

[52 FR 5275, Feb. 20, 1987, as amended at 52 FR 26954, July 17, 1987; 52 FR 32539, Aug. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 53 FR 45899, Nov. 15, 1988]

§ 771.21 General License GTDA and GTDR; technical data.

(See §§ 779.3 and 779.4 of this subchapter.)

[13th Gen. Rev. of Export Regs., 35 FR 9119, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 771.22 General license G-TEMP; temporary exports.

(a) *Scope.* A general license designated G-TEMP is established authorizing the export commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exceptions set forth below. Commodities shipped under this general license must be returned to the country from which they were exported as soon as practicable but, except in circumstances described below, no later than one year from the date of export. This requirement does not apply if the commodities are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the Export Administration Regulations or in writing by the Office of Export Licensing.

(b) *Eligibility commodities.* The following commodities are eligible to be shipped under General License G-TEMP:

(1) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include such equipment as is necessary to commission or service goods, provided that the equipment is appropriate for this purpose and that all goods to be commissioned or serviced have been legally exported from the United States, legally reexported, or made in a foreign country incorporating U.S. origin parts in accordance with the requirements of § 776.12 of this subchapter. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped

unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Notwithstanding the restriction in § 771.22(c), equipment necessary to commission or service goods, may be taken as tools of trade to Country Group Q, W, Y and the People's Republic of China.

(2) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported under this provision to all destinations, except Country Groups S and Z, provided that:

(i) The parts would qualify for shipment under General License GLR if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kits are returned, except that one-for-one replacements may be made in accordance with the requirements of General License GLR and the defective parts returned.

(3) *Exhibition and demonstration Country Groups T and V.* Commodities and software for exhibition or demonstration in Country Groups T or V (excluding the People's Republic of China) may be exported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software shall not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by the Office of Export Licensing. However, prior to or after an exhibition or demonstration, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over disposition of the commodities and software, pending movement to another site, return to the U.S., or approval for other disposition. The export documentation for this type transaction shall show the U.S. e porter as ultimate consignee, in care the person who will have control ov the commodities and software abroa

(4) *Inspection and calibration.* Co modities to be inspected, tested, ca brated or repaired abroad.

(5) *Containers.* Containers for whic another general license is not availab and that are necessary for export commodities. However, General L cense G-TEMP does not authorize th export of the container's content which must be separately authorize for export under either a general o validated license.

(6) *Broadcast material.* (i) Vide tape containing program material re corded in the country of export to be publicly broadcast in another country

(ii) Blank video tape (raw stock) for use in recording program materia abroad.

(7) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that requires return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's inbond industrialization program (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States. (*See* § 771.22(c)(3).)

(8) *News media.* Commodities necessary for news-gathering purposes (and software necessary to use such commodities) that accompany "accredited" news media personnel, (*i.e.*, persons with credentials from a news gathering or reporting firm) to Country Groups Q, S, W, Y, or Z, or the People's Republic of China if the commodities:

(A) Are retained under "effective control" of the exporting news gathering firm;

(B) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (b)(8), news media is defined as maintaining effective measures to prevent unauthorized access (i.e., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this provision from the U.S., the exporter shall send a copy of the packing list or similar identification of the exported commodities, to the Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that General License G-TEMP is being used properly.

(iii) Commodities necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported under and in accordance with paragraph (b) (1), tools of trade, of this section if owned by the exporter/firm (Note: paragraphs (b)(1), tools of trade and (b) (8) (iii), news media, of this section do not preclude independent "accredited" contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment) or shall be exported under and in accordance with § 771.6, General License Baggage if they are personal property of the individual news media personnel.

(c) *Special restrictions*—(1) *Destinations.* (i) No commodity or software may be exported under this general license to Country Group S or Z except as permitted by paragraph (b)(8), news media, of this section;

(ii) No commodity or software identified by the code letter "A", "B", or "M" following the Export Control Commodity Number on the Commodity Control List may be exported under this general license to Country Group Q, W, or Y, or the People's Republic of China except:

(A) Commodities and software exported under paragraph (b)(8), news media, of this section;

(B) Commodities and software necessary to commission or service goods exported under (b)(1), tools of trade, of this section; and

(C) Commodities exported as parts in kits, consistent with the requirements of paragraph (b)(2), kits consisting of replacement parts, of this section.

(iii) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Groups Q, S, W, Y and Z, and the People's Republic of China, or any national thereof.

(2) *Commodities.* The following commodities may not be exported to any destination under this general license;

(i) Supercomputers;

(ii) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 of this subchapter either directly or indirectly in any sensitive nuclear activity as described in § 778.3 of this subchapter.

(iii) Electronic, mechanical or other devices, as described in § 776.13(a) of this subchapter, primarily useful for surreptitious interception of wire or oral communications; and

(iv) Commodities listed in Supplement No. 1 to part 773 of this subchapter, except that commodities identified in the footnotes thereto as available for shipment to certain countries under the Distribution License procedure may be shipped to those same countries under General License G-TEMP.

(3) *Use or disposition.* No commodity or software may be exported under this general license if:

(i) An order to acquire the commodity has been received before shipment;

(ii) The exporter has prior knowledge that the commodity will stay abroad beyond the terms of General License G-TEMP; or

(iii) The commodity or software is for lease or rental abroad.

(d) *Return or disposal of commodities.* All commodities and software exported under this General License G-TEMP shall, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were exported under G-TEMP, or shall be disposed of or retained by one of the following ways:

(1) *Authorization under Form BXA-699P.* If the U.S. exporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this general license, he shall request authorization therefore by submitting Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, to the Office of Export Licensing at the address listed in § 771.2(h). (*See* § 774.3 of this subchapter for more information on reexport authorizations.) Such request shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination. The request shall also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination. The Office of Export Licensing will advise the exporter of its decision.

(2) *Use of validated license.* An outstanding validated export license may also be used to dispose of commodities or software covered by General License G-TEMP provided that the outstanding license authorizes direct shipment from the United States of the same commodity or software to the same new ultimate consignee in the new country of destination.

(3) *Use of the permissive reexport,* as defined in § 774.2 of this subchapter.

(4) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity(ies) or software abroad beyond the 12 months authorized in § 771.22(b), he shall request such authorization by submitting Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, 90 days prior to the expiration of the 12-month period. The request shall be sent to the Office of Export Licensing at the address listed in § 771.22(c)(2) and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If the Office of Export Licensing approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. The Office of Export Licensing mormally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six-month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (d)(1) of this section.

(e) *Records.* In accordance with the provisions of § 787.13 of this subchapter, the exporter shall retain and make available for inspection, upon demand, by the Bureau of Export Administration all records of each export under this general license as well as the Customs Entry Number or any other evidence of the disposition of the commodities exported, i.e., freight bills or commercial invoices.

(Approved by the Office of Management and Budget under Control Numbers 0694-0010 and 0694-0029)

[55 FR 49276, Nov. 27, 1990]

§ 771.23 General license GFW; low level exports to certain countries.

(a) *Scope.* A general license designated GFW is established authorizing exports of certain low-level commodities subject to national security controls. In most cases, these commodities have performance characteristics that permit the United States to approve exports to controlled countries with only notification to other COCOM governments.

(b) *Eligible countries.* Shipments of eligible commodities may be made under this general license to any destination in Country Groups T or V except the People's Republic of China, Afghanistan, Iran, Syria, or the People's Democratic Republic of Yemen unless the Advisory Notes that indicate likelihood of approval for Country Groups QWY contain additional country restrictions.

(c) *Eligible commodities.* The commodities eligible for export under this general license are those described in the Advisory Notes in the Commodity Control List that indicate likelihood of approval for Country Groups QWY. (The Advisory Notes for the People's

Republic of China and the notes indicating "favorable consideration" are not applicable to GFW eligibility). End-use and quantity restrictions in such Advisory Notes may be disregarded in determining whether GFW may be used. However, certain Advisory Notes may contain specific restrictions on the applicability of GFW. When the Advisory Note is excluded from GFW eligibility, the exclusion will be described by the phrase "Not Eligible for General License GFW". When the Advisory Note is restricted from GFW eligibility, the restriction will be described by the phrase "GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to part 773". Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

[52 FR 43852, Nov. 17, 1987, as amended at 52 FR 48523, Dec. 23, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 6792, Feb. 27, 1990]

§ 771.24 General License G-COCOM: certain shipments to [illegible] participating countries.

(a) *Scope.* A general license designated G-COCOM is established, authorizing exports to COCOM participating countries, Austria, Finland and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments, as well as commodities within the China "Green Zone".

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Australia, Austria, Belgium, Denmark, France, the Federal Republic of Germany, Finland, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom. Exports may be made under G-COCOM only when intended for consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the Export Administration Regulations.

(c) *Eligible exports.* The commodities eligible for export under this general license are those also eligible for General License G-COM or GFW, and those described in Advisory Notes indicating likelihood for approval for exports to the People's Republic of China, unless the Advisory Note contains the phrase "Not Eligible for General License G-COCOM". End-use and quantity restrictions in the Advisory Notes may be disregarded in determining whether G-COCOM may be used. Commodities controlled under § 776.18(a) of this subchapter (nuclear weapons delivery), as specified in the "Reason for Control" paragraphs of the applicable entries identified on the Commodity Control List, are not eligible for export under this general license. Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

(d) *Special documentation requirements for Switzerland.* Prior to shipment to Switzerland under this General License G-COCOM, the exporter must obtain and retain on file a Swiss Blue Import Certificate.

[54 FR 29013, July 11, 1989, as amended at 55 FR 25082, June 20, 1990; 55 FR 53490, Dec. 31, 1990]

§ 771.25 General License GCT; COCOM Trade.

(a) *Scope.* A general license designated GCT is established, authorizing exports to COCOM participating countries of all "A" level commodities except those specifically excluded by the "*Commodities Not Eligible for GCT*" paragraphs in certain Export Control Commodity Numbers (ECCNs) on the Commodity Control List. Exports may be made under GCT only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the Export Administration Regulations.

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Australia, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey and the United Kingdom. (Canada is also a COCOM member, but generally there is no license requirement for shipments to Canada (see § 770.3 of this subchapter).)

(c) *Eligible exports.* The commodities eligible for export under this General License GCT are all "A" level commodities that are *not* specifically excluded by the *"Commodities Not Eligible for GCT"* paragraphs located in certain ECCNs. The exclusion paragraphs apply to those commodities that exceed the GFW or G-COCOM eligibility levels. All shipments under this General License GCT are subject to the prohibitions contained in § 771.2(c).

(d) *Importer statement.* Prior to shipping any eligible "A" level commodity that exceeds GFW or G-COCOM limits under General License GCT, the exporter must obtain the following statement, which may be included on the order or other commercial documents that identify the importer, goods to be exported, the country of destination, and that is signed by the foreign importer.

> We will import these COCOM controlled goods and will not ship them outside COCOM participating countries without prior authorization from the appropriate national authorities.

(1) *Single/multiple purchase orders.* The importer's statement may cover more than one purchase order. The exporter may request, from the same importer, a statement that covers a single purchase order or multiple purchase orders that may be issued within the next 12 months.

(2) *Transmission of statement.* Either the signed original or a facsimile of the signed original must be received by the exporter before shipment under General License GCT.

(3) *Availability of statement.* The exporter is required to keep the importer statement on file and available for inspection in accordance with the provisions of § 787.13(c) of this subchapter.

(e) *Restrictions on commodities redirected enroute.* Commodities exported under the provisions of this § 771.25 may not be re-directed enroute to a new country of destination without prior authorization from the Office of Export Licensing, U.S. Department of Commerce, unless:

(1) The new ultimate country of destination is also a COCOM participating country; and

(2) The new ultimate consignee (importer) provides the re-routing party with a signed importer's statement, as required by § 771.25(d).

(f) *Export Clearance—(1) Shipper's Export Declaration.* A shipment that contains commodities eligible under General Licenses GFW, G-COCOM, and GCT may be included under GCT on the same Shipper's Export Declaration (SED). When making such a shipment, the exporter must place the general license symbol "GCT" in the appropriate space on the SED. Even though the general license symbol "GCT" is noted on the SED, an importer statement is required only for those items on the SED that exceed the GFW or G-COCOM limits (see § 771.25(d)).

(2) *Destination Control Statement.* In accordance with § 786.6 of this subchapter, the exporter is required to enter an appropriate Destination Control Statement on all commercial documents (e.g., the bill of lading, the airway bill, and the commercial invoice) covering an export from the United States under General License GCT. In using the destination control statements listed in § 786.6(d) of this subchapter, Statements No. 1 and 2 may be completed to show "COCOM countries" instead of an individual country of destination, and Statement No. 2 may be completed to show distribution or resale in "COCOM countries."

(g) *Recordkeeping requirements.* Records of transactions involving exports under General License GCT must be maintained in accordance with the recordkeeping requirements of § 787.13 of this subchapter.

[55 FR 25085, June 20, 1990; 55 FR 28865, July 13, 1990]

SUPPLEMENT 1 TO PART 771—CERTIFIED END-USERS

The following enterprises have been designated as Certified End-Users and are eligible to receive U.S. origin commodities under the provisions of General License G-CEU.

(No Certified End-Users have been identified at this time.)

[52 FR 5275, Feb. 20, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 772—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

Sec.

772.1 General provisions.
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772.13 Special provisions for transfer of licenses to another party.
SUPPLEMENT 1—INSTRUCTIONS FOR PREPARING AN APPLICATION FOR A VALIDATED LICENSE

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985) E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of Octo-
ber 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, Oc-
tober 29, 1986); Pub. L. 95-223 of December
8, 1977 (50 U.S.C. 1701 *et seq.*) E.O. 12730
f September 30, 1990 (55 FR 40373, Octo-
er 2, 1990).

SOURCE: 40 FR 27227, June 27, 1975. Re-
esignated at 53 FR 37751, Sept. 28, 1988,
nless otherwise noted.

772.1 General provisions.

(a) *Scope.* The Export Administra-
on Regulations shall apply to indi-
dual export license applications and
individual validated licenses issued
the Office of Export Licensing
EL), *whether submitted in writing*
electronically. The provisions of
s part shall also apply to other
es of validated licenses and applica-
ns therefor, consistent with the pro-
ions of Parts 773 through 799, inclu-
. The Office of Export Licensing
s not issue export licenses for commodities subject to the export licensing jurisdiction of other Government agencies. (See § 770.10.)

(b) *Exports requiring validated licenses.* No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

(c) *Responsibility of licensee.* Any applicant to whom an export license is issued becomes the licensee. The licensee will be held accountable for the use of the license, whether as a principal (exporting for his own account) or as an agent (including an agent acting for the account of a foreign principal who is not subject to the jurisdiction of the United States). The licensee assumes responsibility for effecting the export, for proper use of the license, and for performance of all its terms and conditions. The obligations arising under the provisions of the Export Administration Act of 1979, as amended, and the Export Administration Regulations are the same whether the license application is submitted and issued in writing or electronically.

(d) *Licensing actions.* When necessary to fulfill the purposes of the export control program as set forth in § 770.1, an application may be approved, in whole or in part, rejected, in whole or in part, or returned without action. The applicant will be formally notified of the action in writing by the Office of Export Licensing. (For an appeal, see Part 789.)

(e) *OEL mailing address.* All forms, documentation and reports (OMB approval No. 0625-0001 and No. 0625-0003) submitted to the Office of Export Licensing under this Part 372 should be mailed to—Office of Export Licensing, P.O. Box 273, Washington, D.C. 20044, unless the regulation indicates another address.

(f) *OEE mailing address.* All documentation and reports submitted to the Office of Export Enforcement under this Part 772 should be mailed to: Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044.

(g) *Administrative action revoking validated export licenses*—(1) *General.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may revoke any export license, including a general license, issued or otherwise available to any person convicted of a violation of 18 U.S.C 793, 794 or 798, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)) or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(2) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (h)(1) of this section, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to revoke any validated export license issued to such person. The Director, Office of Export Licensing, shall notify each person whose validated export license is revoked under this section by letter specifying each license revoked.

(3) *Appeal.* Any appeal of an action under this section shall be pursuant to Part 789.

(h) (1) *Administrative action revoking export licenses.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may revoke any export license, including any general license, issued or otherwise available to any person who has been convicted of a violation of the Export Administration Act, or any regulation, license, or order issued under the Act; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

[40 FR 27227, June 27, 1975, as amended at 45 FR 59300, Sept. 9, 1980; 47 FR 15109, Apr. 8, 1982; 48 FR 17582, Apr. 25, 1983; 50 FR 53131, Dec. 30, 1985; 52 FR 48808, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 4005, Jan. 27, 1989]

§ 772.2 Types of validated licenses.

(a) *Definition.* A "validated license" is a document issued by, or under the authority of, the Office of Export Licensing, authorizing a specific export. Whenever reference is made in Part 772 to a license application or to a license issued upon application, the reference is to a validated license, as distinguished from the general licenses established in Part 771, for which no applications are required and no license documents are issued.

(b) *Types.* The types of validated licenses are:

(1) An "individual license" is any validated license, other than those named in paragraphs (b) (2) through (4) of this section, authorizing the export of technical data or a specified quantity of commodities during a specified period to a designated consignee (or, in certain cases, to designated consignees).

(2) A "Project License" (§ 773.2) authorizes the export of commodities (and technical data where specifically authorized) required for a specified activity for a period of approximately one year from the issuance of the license. Renewals may be valid for up to two years.

(3) A 'Distribution License' (§ 773.3) authorizes the export of certain commodities to approved consignees in Country Groups T & V, except Afghanistan, Iran, and the People's Republic of China during a period of one year. Renewals may be valid for up to two years. The consignees must be foreign distributors or users of the licensed commodity.

(4) A "Service Supply (SL) License" (§ 773.7(d)(1)) authorizes a U.S. exporter or manufacturer to export spare and replacement parts to Country Groups T or V (except Afghanistan, Iran, and the People's Republic of China) and, under certain conditions, to export replacement parts to Country Groups Q, W, Y, Afghanistan and the People's Republic of China to service equipment made or exported by the licensee or made by his foreign subsidiary.

(5) [Reserved]

(6) A "Service Supply (SL) License" (§ 773.7(d)(1)) Authorizes a U.S. ex-

porter or manufacturer to export spare and replacement parts to Country Group T or V (and, in a more limited degree, only replacement parts to Country Group Q, W, or Y) to service equipment made or exported by the licensee or made by his foreign subsidiary.

[40 FR 27227, June 27, 1975, as amended at 42 FR 62911, Dec. 14, 1977; 45 FR 65206, Oct. 2, 1980; 48 FR 53065, Nov. 23, 1983; 51 FR 46852, Dec. 29, 1986; 52 FR 6138, Mar. 2, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 772.3 Parties to the transaction.

(a) *Disclosure requirement*—(1) *Full disclosure.* The applicant for a validated export license is required to make the fullest disclosure of all parties in interest to the transaction so that a decision on the application may be made with the fullest knowledge of all relevant facts and so that the identity and location of the persons who know the most about the transactions may be easily ascertained in the event of inquiry.

(2) *Parties.* The applicant must disclose fully on the license application the names of all the parties who are concerned with or interested in the proposed export. This includes all parties participating on their own account: the applicant as exporter, the ultimate consignee, the intermediate consignee, and the purchaser, all as defined in paragraph (b) of this section. If the application is filed for an account other than that of the applicant, the agent, as applicant, must disclose the name of his principal.

(3) *Identification of principal.* Where more than one person in a ransaction can fairly be described as eing a principal, the application hould be accompanied by a statement iving the names and addresses of uch persons and their roles in the ransaction. Where there is any doubt s to which of several persons should e named as the party to the license, e applicant must disclose the names all such persons and the functions be performed by each. For this pur- se a separate statement attached to e application will be acceptable.

b) *Definitions of parties in inter-*—(1) *Applicant.* (i) The applicant should be that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the commodities or technical data out of the country and is thus, in reality, the exporter. For this purpose, it is the identity of the applicant and his role in the transaction, and not the terms of sale, with which the Office of Export Licensing is primarily concerned.

(ii) A license application may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by his duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

(iii) Ordinarily, a seller who delivers commodities in the United States to a foreign buyer, or to the latter's forwarder or other agent, would not be in a position to assume responsibility for the export and would not be a proper applicant. This would normally be the situation where sale is made f.o.b. factory, although such terms of sale may relate only to price and are not necessarily inconsistent with the assumption by the seller of full responsibility for effecting the export.

(iv) If the seller intends to leave the responsibility for effecting export in the hands of the foreign importer or the latter's forwarding or purchasing agent in the United States, the foreign importer should apply for the license in his own name if he is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer's forwarding or purchasing agent shall appear as applicant and exporter and shall disclose his role as agent and the name of his principal.

(2) *Ultimate consignee.* The ultimate consignee is the person located abroad who is the true party in interest in actually receiving the export for the designated end use. A bank, freight forwarder, forwarding agent, or other party, when acting as an intermediary, is not acceptable as the ultimate consignee.

(3) *Intermediate consignee.* The intermediate consignee is the bank, for-

warding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the export to the ultimate consignee. If the intermediate consignee is unknown at the time of application or none is to be used, this must be stated on the application. If, at the time of filing his application, an exporter is unable to determine at which port the commodities will be unloaded from the exporting carrier, optional intermediate consignees may be shown. Before any shipment is made, the name and address of any intermediate consignee must be ascertained and set forth on the Shipper's Export Declaration, whether or not named on the license application or validated license. However, the intermediate consignee need not be named on the commercial invoice. (See § 772.11(e)(3) regarding amendment of license to add or change intermediate consignees and § 772.11(f)(5) for shipments unloaded prior to arrival at country of ultimate destination, that do not require the naming of an intermediate consignee.)

(4) *Purchaser.* The purchaser is that person abroad who has entered into the export transaction with the applicant to purchase the commodities or technical data for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as the purchaser.

(5) *Order party.* The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

§ 772.4 How to apply for a validated license.

(a) *Form and manner of filing*—(1) *Application form.* An application for a validated license must be submitted on Form BXA-622P, Application for Export License, or on Form ITA-622P, Application for Export License, revised July 1981 or later. After February 15, 1989, only Form BXA-622P will be acceptable. Earlier versions will be returned without action. An application that omits essential information, or is otherwise incomplete, will be returned without action to the applicant. (See § 370.12 for instructions on obtaining forms.)

(ii) *Facsimiles of Form BXA-622P.* Exporters may print facsimiles of Form BXA-622P with printed answers to many of the questions, provided the facsimiles are identical with the official form in size, color, ink, and typographic arrangement.

(iii) *Preparation of Form BXA-622P.* The instructions set forth in Supplement No. 1 to Part 772 apply to the preparation of applications submitted on Form BXA-622P for all types of validated export licenses issued by the Office of Export Licensing, unless modified by special licensing procedures and provisions contained in the Export Administration Regulations.

(iv) *Supporting documents.* Supplement No. 1 to part 772 contains instructions on how to prepare export license applications when supporting documents are required. Part 775 of this subchapter indicates when supporting documents are required for export license applications.

(2) *Assembly and submission of applications*—(i) *Assembly.* All documents or correspondence accompanying the application should bear the applicant's reference number, if any, and be firmly stapled together in the upper left corner of the application. Applications that omit essential information will be returned without action.

(ii) *Submission by mail.* Mail applications and related documents to the address in § 772.1(f).

(iii) *Hand-carried submissions.* Hand-carry applications and related documents to—Exporter Assistance Staff, Room 1099A, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, D.C. 20230.

(b) *Applying electronically for a validated license.* An individual validated license may be applied for electronically by an applicant that has been authorized to do so in accordance with this Part. An authorization to submit license applications electronically may be limited or withdrawn by the Department of Commerce at any time.

(1) *Requesting application instructions and approval to submit electronic applications.* To apply for validated licenses through electronic submission, the applicant company should request application instructions from the Department of Commerce by submitting to the Office of Export Licensing (OEL) a letter containing the name of the applicant company and the address, phone number, and name of the principal contact person of the applicant company. The letter should be mailed to the Office of Export Licensing, Department of Commerce, P.O. Box 273, Washington, DC 20044. For hand delivery, letters should be delivered to Office of Export Licensing, Room 2705, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. All correspondence should include "ATTN: Electronic Submission" on the envelope. Following the receipt of the license application instructions from the OEL, the applicant company may request approval to submit license applications electronically as set forth in those instructions.

(2) *Assignment and use of company and personal identification numbers.* (i) Each applicant company granted permission to submit validated license applications electronically will be assigned a company identification number. Each individual approved by OEL to submit license applications electronically for the applicant company will be assigned a personal identification number ("PIN"). A PIN will be assigned only to an individual the applicant company has certified to OEL to be authorized by the applicant company to act for it with respect to electronic submissions under these regulations.

(ii) An applicant company submitting license applications electronically shall reveal the assigned company identification number only to the PIN holders, their supervisors, employees, or agents of the applicant company with a commercial justification for knowing the company identification number.

(iii) An individual PIN holder shall not:

(A) Disclose the PIN to anyone;

(B) Record the PIN either in writing or electronically;

(C) Authorize another person to use such PIN; or

(D) Use the PIN following termination by the Department of Commerce or by the applicant company of his authorization or approval for PIN use.

(iv) To prevent misuse of the PIN—

(A) If a PIN is lost, stolen or otherwise compromised, the applicant company and the PIN holder shall report the loss, theft or compromise of the PIN immediately by calling the OEL at (202) 377-8536 and shall confirm the report in writing within two business days to OEL at the address provided in paragraph (b)(1) of this section.

(B) An applicant company shall be responsible for immediately notifying OEL whenever a PIN holder leaves the employ of the applicant company or otherwise ceases to be authorized by the applicant company to submit license applications electronically on its behalf.

(v) No person shall use, copy, steal or otherwise compromise a PIN assigned to another person; and no person shall use, copy, steal or otherwise compromise the company identification number of a company that has not authorized such person to have access to that number.

(3) *Electronic submission of a validated license application.* (i) Upon approval of the applicant company's request to use electronic submission, OEL will provide instructions on the method to transmit the license application electronically. These instructions may be modified by the Department of Commerce from time to time. In addition, OEL may direct that any electronic license application be resubmitted in writing, in whole or in part for any reason, including the desire of OEL in a particular case to receive documentation in support of the license application that does not lend itself to electronic submission.

(ii) The electronic submission of a validated license application shall constitute an export control document. Such submissions shall provide the same information as written applications, except the applicant company need not submit the supporting documentation required by Part 775. However, the applicant company must retain these documents in its possession consistent with the provisions of § 787.13. The applicant company and PIN holder submitting the application shall be deemed to make all representations and certifications as if the submission were made in writing by the applicant company and signed by the submitting PIN holder. Electronic submission of a license application will be considered complete upon the transmittal of the application to the Department of Commerce or to an entity under contract to receive such applications for the Department of Commerce.

(4) *Maintenance of records.* An applicant company shall maintain a log, either manually or electronically, specifying the date and time of each electronic submission, the ECCNs of commodities on each electronic submission, and the name of the employee or agent submitting the license application. This log may not be altered. Written corrections must be made in a manner that does not erase or cover original entries. If the log is maintained electronically, corrections may only be made as notations.

(5) *Updating.* An applicant company shall promptly notify OEL of any change in its name or address. An applicant company that wishes to have an individual added as a PIN holder shall so advise OEL and proceed in accordance with the instructions OEL will provide. Applicant companies should make periodic reviews to ensure that PINs are held only by individuals whose current responsibilities make it necessary and appropriate that they act for the applicant company in this capacity.

(c) *Requirements set forth on forms.* All terms, conditions, provisions, and instructions, including the applicant's certification, contained in such form(s) are hereby incorporated as a part of the Export Administration Regulations.

(d) *Separate application for each ultimate consignee.* Generally, an individual license application should list only one ultimate consignee. Export Administration may authorize additional ultimate consignees (mult consignees) and end-users when contemplated transaction warrant and EA determines that such actio appropriate because the transact involves common licensing consi ations such as parties, commodit destination, or end-use.

(e) *Inclusion of related commodi on a single application.* For e entry on the Commodity Control (Supplement No. 1 to § 799.1) ther a three-digit number in the paragra titled "Processing Code." Entries the Commodity Control List hav the same Processing Number may included on a single license appli tion. (See §§ 773.4 and 776.8 for exc tions.) Regardless of the Processi Number, shipments of commodities relief or charity may be included on single license application.

(f) *Partial approval.* An applicati may be approved in whole or in pa However, if specifically requested the form, the application will be co sidered as a whole and either approv or rejected in its entirety.

(g) *Partial or periodic shipment* Where partial or periodic shipments technical data or of an identical com modity are to be made by the appl cant to the same consignee in a for eign country, a single application ma be filed covering the entire quantity.

(h) *Second application*—(1) *Pendin action.* A second application coverin the same proposed export shall not b submitted pending action on the firs application.

(2) *Resubmission.* When an application has been returned without action and is being resubmitted, a new application form must be submitted. When a new form is submitted, the original application must be attached to the new one. When a license application has been returned without action with instructions that it is not to be resubmitted until a later date, the resubmission of the application must be in accordance with the requirements existing at the time of resubmission.

(i) *Emergency clearance.* (1) When an exporter believes that an emergency situation necessitates expedited processing of an application, he should contact the Exporter Assistance Staff of the Office of Export Licensing

(Telephone: 202-377-4811; telex: 892536; telefax: 202-377-3322). An "emergency" is defined as an unforeseeable situation over which the exporter has no control. Since a signed application must be submitted to the Office of Export Licensing before any action can be taken, the exporter should use one of the following emergency procedures for submitting the application form to OEL:

(i) Hand-carry the application directly to—Processing Unit, Office of Export Licensing, Room 2705, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. The best way to ensure prompt delivery, other than by company personnel hand carrying, is to use those private courier services that guarantee overnight delivery. Delivery must be made to the Processing Unit within the Office of Export Licensing. C.O.D. submissions will not be accepted. "Attention: Exporter Assistance Staff—Emergency Clearance Required" should be marked on the envelope. The Exporter Assistance Staff will review daily the applications for which emergency processing is requested and determine whether such processing is justified.

(ii) Submit by U.S. Postal Express Mail Service to—Processing Unit, Room 2705, Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

with "Attention: Exporter Assistance Staff—Emergency Clearance Required" marked on the envelope. Express service guarantees next day delivery to the designated mail drop before close of business on that day.

(iii) Submit reexport and amendment requests according to procedures outlined in paragraphs (i)(1) (i) and (ii) of this section.

(iv) Submit applications for short supply commodities according to the procedure outlined in § 777.1(c)(3).

(2) If an application already has been submitted to the Office of Export Licensing when an emergency arises, the applicant should contact the Exporters' Service Staff directly.

(3) The Exporter Assistance Staff will evaluate the exporter's application and determine whether emergency handling is warranted. Applicants should therefore include in a covering letter headed "Emergency Handling Request" the justification for the request supported, where appropriate, by copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. In certain cases, the exporter may be *required* to submit copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. The letter should also include a statement that the exporter understands that a license issued under the emergency procedure is valid only until the end of the month following the month in which it is issued and may not be extended. Frequent emergency requests will be given particularly close scrutiny, since the Office of Export Licensing will not permit this emergency procedure to become a substitute for timely filing of license applications by exporters. Exporters who follow the emergency procedure will be informed by the Exporter Assistance Staff if their application does not warrant emergency handling. Otherwise, applicants can assume that their request for emergency handling has been granted.

(4) When a license is approved on an emergency basis by the Office of Export Licensing, the applicant will be notified of the license number by phone, wire or in person, in order that shipment can be made without waiting for the arrival of the license by mail.

(5) The validity period of a license issued under this emergency procedure will end no later than the last day of the calendar month following the month in which the license is issued unless a longer validity period can be justified. The Office of Export Licensing will not consider requests to extend the validity of a license that was issued under this emergency procedure.

(6) Emergency license procedures described in paragraph (i) of this section are not applicable to special licenses. Due to the comprehensive nature of Distribution, Project, or Service Supply Licenses or licenses issued under the Aircraft and Vessel Repair Station procedure, requests for emergency handling of those licenses will

be denied. Any request for expedited treatment of Humanitarian or GTE Licenses should be directed to the Special Licensing Division of the Office of Export Licensing (telephone: 377-4196; telex: 892536; telefax: 377-4096).

[40 FR 27227, June 27, 1975, as amended at 42 FR 46509, Sept. 16, 1977; 45 FR 45894, July 8, 1980; 45 FR 58334, Sept. 3, 1980; 46 FR 38349, July 27, 1981; 47 FR 5207, Feb. 4, 1982; 47 FR 15109, Apr. 8, 1982; 47 FR 22942, May 26, 1982; 47 FR 58123, Dec. 29, 1982; 50 FR 48748, Nov. 27, 1985; 52 FR 6138, Mar. 2, 1987; 52 FR 48808, Dec. 28, 1987; 53 FR 1615, Jan. 21, 1988; 53 FR 16390, May 9, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989; 55 FR 31823, Aug. 6, 1990; 55 FR 46505, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46505, Nov. 5, 1990, § 772.4(a)(1)(iv) was added, effective February 4, 1991.

§ 772.5 Additional information.

(a) *Requirements in Export Administration regulations and related forms.* Any person applying for an individual or other type of validated export license shall furnish such information with respect to the application as may be required by the Office of Export Licensing, in addition to the information required by the Export Administration regulations or by the form on which the application is made.

(b) *Identification of information.* Any additional information submitted by an applicant in connection with a license application must be clearly identified as part of such application.

(c) *Supporting information.* A supporting letter should give additional information for only the application to which it is attached.

§ 772.6 Substantiation of facts on application.

(a) *Orders and other material facts*—(1) *Order.* An application for an export license must be based on an order. An "order" means a communication from a person in a foreign country or his representative expressing an intent to import commodities or technical data from the applicant or order party, as defined in paragraph (b) of this section. While an order must, in any case, be more than a mere business inquiry relating to a possible export, it need not be an agreement that can presently be executed or that would become a binding contract upon acceptance. Furthermore, an order need not be an unconditional offer to buy. An order, for instance, may be contingent upon certain variable conditions such as market price, time of delivery, availability of the commodities in kinds and quantities desired, and other undetermined factors. Such a contingent offer still constitutes an order within the meaning of these provisions. Similarly, a continuing or "open" order that remains at all times flexible in some respects may be acceptable. If, however, all of the terms of the order are not finally determined before an application is submitted, all negotiations toward the settlement of the terms must have been advanced sufficiently to establish the intent of the person placing the order to consummate the proposed transaction. (The Office of Export Licensing may grant a waiver of this order requirement under certain circumstances. See § 772.6(c)(1)).

(2) *Documentary evidence.* Before filing an application for an export license, the applicant should have in his possession documentary evidence of the order and of the following facts relating to the purchase transaction that appear on the license application:

(i) Country of ultimate destination;

(ii) Names and addresses of the ultimate consignee, intermediate consignee (if any), purchaser (if other then ultimate consignee), and any other party to the transaction, whether principal or agent, including but not limited to brokers, representatives, or other agents through whom the order was received;

(iii) Quantity, value and description of commodity or technical data to be exported; and

(iv) End use of the export.

If the applicant does not have the documentary evidence that is required, the evidence must be in the possession of the order party involved in the transaction.

(3) *Definitions.* (i) The term "applicant" is defined as the party (or his duly authorized agent) who, as the principal party in interest in the export transaction, has the power and

responsibility for determining and controlling the sending of the commodities and technical data out of the country and is thus, in reality, the exporter. The applicant must be subject to the jurisdiction of the United States.

(ii) The term "order party" is defined as that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and received the order from the foreign purchaser or ultimate consignee.

(iii) The term "documentary evidence" means any document(s) from the foreign purchaser or his representative which contain the terms and conditions of an offer to buy the commodities or technical data for which the export license is requested. Such evidence may take the form of a contract signed by both parties, or of letters, telegrams, cables, confirmations, or other documents which set forth the terms of the offer of the foreign purchaser to buy or the acceptance by the foreign purchaser of the exporter's offer to sell.

(iv) "Evidence of the facts relating to the purchase transaction" means any document(s) from the purchaser or ultimate consignee that contain the information required in a license application as set forth in paragraph (a)(2) of this section. The printed name, address, or nature of business of the ultimate consignee or purchaser appearing on a letterhead or order form shall not constitute evidence of either his identity, country of ultimate destination, or end use of the commodities described in the application.

(4) *Order received by foreign agent.* An order received by a foreign agent of a U.S. exporter must be transmitted to the U.S. exporter before an application may be submitted. An application, however, will be accepted if it is based on an order from the foreign agent of a U.S. exporter covering commodities intended for general resale by the foreign agent to presently unknown end users.

(b) *Signature of order party.* The application must be signed by the order party, as well as by the applicant if they are different. The order party should be shown in the "Order Party's Certification" item on the application. The signature of the order party is not required, however, in cases where maintenance, repair, or operating supplies are to be exported for use and consumption by the ultimate consignee and not for resale, and where the applicant has complete records and information concerning the transaction(s), including all correspondence between the foreign consignee and the person in the United States who originally received the order (the order party).

(c) *Export transactions where no order has been received*—(1) *Exceptions to the order requirement.* If no order has been received, or if an inquiry has been received that does not clearly meet the requirements of an order as defined in paragraph (a)(1) of this section, the Office of Export Licensing will consider granting a waiver of the order requirement where the applicant is able to show that an exception is warranted. Some examples of reasons that, if fully substantiated, might warrant an exception are:

(i) An unusual expenditure of time, money or technical skill, in excess of ordinary sales expenses is necessary before negotiations for an order may be pursued and before a bid can be submitted or an order obtained.

(ii) The applicant is under an unusual obligation to export immediately the commodities or technical data covered because of a special trade or industry practice.

(iii) The export involves a sample, gift, relief, or charitable shipment, or other shipment where an order is not normally an element of the export transaction.

An applicant requesting such exception should submit with his application all required supporting documentation whenever possible and a statement explaining in full the reason(s) for the requested exception. If it is not possible to obtain the required documentation at the time the waiver request is submitted, these supporting documents shall be submitted as soon as they are obtainable. If the exception request is granted and the license is issued, certain conditions or limitations on the export may be imposed.

(2) Inquiry regarding prospects of obtaining license or other authorization. Export Administration gives a formal licensing decision only through the issuance of a license or other appropriate document. Such decisions are based upon the actual submission of a formal application or other formal request setting forth all the facts relevant to the export transaction and supported by all required documentation. Exporters having questions about the applicability of the regulations to a transaction should follow the procedure described in § 770.11(d).

(d) *Copies of documents.* Section 787.13 defines the recordkeeping requirements of the Office of Export Licensing, including the types of documents that must be kept. In the course of processing an application, the Office of Export Licensing may request either the originals or copies of the documents constituting evidence of an order. The time and manner of submission will be made known to the applicant at the time the request for submission is made. In accordance with § 775.8, all documents submitted in connection with a license application must be identified clearly as a part of that application. All terms and abbreviations must be explained, and an English translation of documents in a foreign language must be attached.

(e) *Changes in facts.* Answers to all items on the application shall be deemed to be continuing representations of the existing facts or circumstances. Any material or substantive change in the terms of the order, or in the facts relating to the purchase transaction or other transaction, shall be promptly reported to the Office of Export Licensing, whether a license has been granted or the application is still under consideration. If a license has been granted, such changes shall be reported immediately to the Office of Export Licensing, in accordance with the provisions of § 772.7(b), even though shipments against the license may be partially or wholly completed. Change in intermediate consignee must be reported on the Shipper's Export Declaration, and in certain cases an amendment to the export license is required. (See §§ 772.3(b)(3) and 772.11(e)).

[43 FR 47171, Oct. 13, 1978, as amended at 45 FR 84027, Dec. 22, 1980; 47 FR 15109, Apr. 8, 1982; 51 FR 52902, Dec. 30, 1985; 51 FR 10366, Mar. 26, 1986; 51 FR 43726, Dec. 4, 1986. Redesignated at 53 FR 37551, Sept. 28, 1988]

§ 772.7 Disclosure of prior action on the shipment.

Any license or amendment obtained without disclosure of the facts set forth in paragraphs (a) and (b) of this section, where applicable, shall be deemed to have been obtained without disclosure of all facts material to the granting of the license or amendment, and the license and amendment so obtained shall be void.

(a) *Detention of commodities or technical data by Customs.* Any person applying for an export license or requesting an amendment[1] to a license, who has reason to believe that the commodities or technical data covered by such license or amendment have been detained by the Office of Export Enforcement or by a Customs Office, shall disclose this fact to the Office of Export Licensing at the time of application.

(b) *Export without a license.* No license application or amendment request shall be submitted to the Office of Export Licensing covering a shipment that is already laden aboard the exporting carrier or exported. If such export should not have been made without first securing a validated license authorizing the shipment, the exporter shall send an explanatory letter to Director, Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044, or send a telegram to Director, Office of Export Enforcement, Office of Export Licensing, Telex: 892536. The explanation shall show why a validated license was not obtained and disclose all facts concerning the shipment that would normally have been disclosed on the license application or amendment request. The Office of Export Licensing will inform the exporter of its action and furnish instructions to him by letter.

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[1] See § 772.11 with respect to amendments to licenses and extensions of their validity periods.

[40 FR 27227, June 27, 1975, as amended at 47 FR 15110, Apr. 8, 1982; 48 FR 17583, Apr. 25, 1983. Redesignated at 53 FR 37551, Sept. 28, 1988]

§ 772.8 Special types of individual license applications.

(a) *Intransit shipments*—(1) *Information required on application.* A license application for commodities moving intransit through the United States that may not be exported under the provisions of General License *GIT*[1] shall include the following information in the "Additional Information" item of the application or on an attachment:

(i) The name and address of the foreign consignor who shipped the goods to the United States;

(ii) A statement that the shipment is wholly of foreign origin; and

(iii) The notation "INTRANSIT SHIPMENT."

(2) *Evidence of foreign government approval.* The applicant should submit any available evidence showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident) with respect to the proposed ultimate destination of the shipment. Such evidence may be in the form of a Transit Authorization Certificate or other document.

(3) *Applicability of special provisions.* Except for a shipment originating in Canada, the application must be accompanied by the document applicable to the country of ultimate destination; e.g., an Import Certificate, a Consignee/Purchaser Statement, a Swiss Blue Import Certificate, or a Yugoslav End-Use Certificate, as appropriate (see Part 775 for details on these documents).

(4) *Limitation on use of license.* A license issued under this Section will be valid only for the export of an intransit shipment wholly of foreign origin and for which a Transportation and Exportation (T. and E.) customs entry or an Immediate Exportation (I.E.) customs entry is outstanding.

(5) *Destination Control Statement.* A shipment of foreign-origin commodities moving in transit through the United States under a validated license must comply with the destination control provisions of § 386.5. Under these provisions the destination control statement must be shown on all bills of lading or air waybills and commercial invoices in the possession of, or sent to the ultimate consignee or purchaser by, the shipper, exporter, carrier, and agent in the United States.

(b) *Commodities transiting Country Group Y or Z en route to any other destination*—(1) *Information required on applications.* A license application to export any commodity that will be unladen from a vessel or aircraft in Country Group Y or Z (or which will move in transit through Country Group Y or Z en route to Canada or a destination in Country Group Q, S, T, V or W) shall be submitted on Form BXA-622P. The application shall be prepared in accordance with the instructions contained in Supplement No. 1 to Part 772, except that where the intermediate consignee in the Group Y or Z country of unlading or transit is unknown at the time of filing the license application, the Group Y or Z country of unlading or transit shall be shown in the "Additional Information" item of the application or on an attachment by a statement such as:

> To be transshipped at (*name of transshipment point*) and destined to (*name of country*); or, To be shipped to (*name of country of destination*) via (*name of country*).

(2) *Designation of intermediate consignee.* Except as set forth below, a validated license issued under the provisions of paragraph (b) of this section will name the intermediate consignee in the Group Y or Z country of unlading or transit approved by the Office of Export Licensing. (Transshipment authority does *not* relieve any person from complying with foreign laws. See § 774.9.)

(3) *Intermediate consignee unknown.* Where the license application indicates that the intermediate con-

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[1] For intransit shipments under General License *GIT*, see § 771.4; and for special clearance procedures applicable to intransit shipments, see § 786.3(p).

signee in the Group Y or Z country of unlading or transit is unknown, the license will name the Group Y or Z country of unlading or transit approved by the Office of Export Licensing. However, the exporter is obliged to obtain an amendment of the export license before shipment is made in those instances where the license does not include the name of the intermediate consignee in the Group Y or Z country of unlading or transit.

(c) *Temporary exports*—(1) *Applications.* General License G-TEMP (see § 771.22) authorizes the temporary export of commodities under certain conditions. The provisions of paragraph (c) apply to the temporary export of a commodity not exportable under General License G-TEMP or any other general license. An application for a license covering a temporary export does not require the usual supporting documentation issued by either the consignee or the country of ultimate destination. Instead, the application shall include the following certification in the space entitled "Additional Information" or on an attachment thereto:

> The commodities described on this application are to be temporarily exported for (*state purpose of export, e.g., demonstration, testing, exhibition, etc.*), used solely for the purpose authorized, and returned to the United States within (*specify period of time*) of the date of export, unless other disposition has been specifically requested and authorized in writing by the Office of Export Licensing.

The applicant's certification must identify a specific number of days/months during which the commodities will remain abroad. The period of time identified in the certification should be no more than the maximum necessary to accomplish the stated purpose, but may not, in any event, exceed one year. Special requests for exceptions to the one year time limit will be considered if the applicant clearly makes such a request on the application form and provides specific justification for it.

Since the applicant retains title to the commodities, he shall be shown on the application as the ultimate consignee, in care of the person who will have custody of the commodities abroad.

(2) *Return of commodities to the United States.* When commodities are returned to the United States after temporary use abroad in Country Group Q, S, W, Y, or Z, the applicant shall notify the Office of Export Licensing, in writing. The notice shall include the case number shown on the related U.S. validated export license, the customs import entry number (if any) of the returned shipment, the date of return, and the port of entry at which all or any part of the commodities were returned to the United States. If only a part of the commodities are covered by the notification, a full explanation shall be included, and an additional written notification sent to the Office of Export Licensing for each partial return until the entire shipment described on the related export license is returned.

(3) *Commodities not returned to the United States.* If it is decided that the commodities are not to be returned to the United States, Form ITA-699P, Request to Dispose of Commodities or Technical Data Previously Exported (OMB approval No. 0625-0009), or a letter, shall be sent to the Office of Export Licensing at the address in § 772.1(e), requesting authorization to dispose of the commodities. (See § 774.3.) In addition, except where the commodities are to be used on a temporary basis only at the proposed reexport destination and returned to the United States after such use, the reexport request shall be accompanied by any documents that would be required in support of an export license application for shipment of the same commodity directly to the proposed destination.

(4) *Action by Office of Export Licensing.* If Form DIB-699P or the letter request is approved, the Office of Export Licensing will validate and issue the second copy of Form DIB-699P. If the request is disapproved, the applicant will be advised of such action. If it is subsequently desired to make any other use or disposition of the commodities that is not authorized by the validated Form DIB-699P, a properly documented written request for amendment of the form shall be

submitted. (Reexport or distribution authority does not relieve any person from complying with foreign laws. See § 774.9.)

(d) *Multiple gift parcels consolidated in a single shipment*—(1) *Limits on consolidated shipments of gift parcels.* The person consolidating multiple gift parcels into a single shipment is responsible for filing an export license application. Each gift parcel included in a license application filed by a consolidator must meet all of the requirements of General License *GIFT*. These requirements include the limits on commodity, dollar-value and frequency of shipment specified in § 771.18 of the Regulations. If all of the requirements are not met, a validated license must be obtained for each parcel.

(2) *Special instructions for completing license applications for consolidated shipments of gift parcels.*

Block 6—Enter the word "none";

Block 7—Enter the word "Various" instead of the name and address of a single ultimate consignee;

Block 8—If the shipment is a direct one, enter the word "none." If the shipment is not direct, enter the name, address and location of the intermediate consignee;

Block 9(a)—Indicate a specific quantity of gift parcels (the quantity requested need not be limited to a single shipment, but may represent a reasonable estimate of parcels expected to be shipped throughout the validity of the license);

Block 9(b)—Enter the words "Gift Parcels";

Block 9(c)—Enter the export control commodity number 6999G and processing code, NG;

Block 9(d)—Indicate a reasonable value approximation proportionate to the quantity of gift parcels shown in block 9(a);

Block 12—Enter "For personal use by recipients," or other similar wording;

Block 16—Be sure the application is signed and the name and title of the signing person is typed or printed; and

Block 17—Leave blank.

To fill out the rest of the application form, follow the instructions on the back of the appliaction cover sheet.

0 FR 27227, June 27, 1975, as amended at FR 62837, Dec. 29, 1981; 47 FR 14696, Apr. 6, 1982; 47 FR 15110, Apr. 8, 1982; 48 R 53065, Nov. 23, 1983; 52 FR 48809, Dec. , 1987; 53 FR 23230, June 21, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989; 55 FR 78, Nov. 27, 1990]

§ 772.9 Issuance of validated licenses.

(a) *General.* When a license application is approved by the Office of Export Licensing, a license is issued on Export License, Form DIB-628 or FC-628. An export license may not set forth all the facts relating to the transaction as they appeared in the license application and supporting documents. Nevertheless, any validated license issued authorizes only the specific export transaction described in the application and supporting documents, unless otherwise specifically provided by the license or the Export Administration Regulations.

(b) *Issuance of license document.* When a license application is received in the Office of Export Licensing it is assigned a case number, consisting of a letter followed by six digits, for identification purposes. After an application is approved, the covering license is issued on Form ITA-628. This document is then validated with the Department of Commerce seal, the date of validation, and the expiration date in the upper right corner of the license. Where necessary, other attachments to a license will also be validated with the Department of Commerce seal and the date of validation. Export licenses, even though they include a license number, are not valid and may not be used unless they have been validated with the Department of Commerce seal. Exporters are cautioned to use the complete license number when preparing Shipper's Export Declarations or other export documents or when requesting services from the Office of Export Licensing.

(c) *Quantity of commodities authorized for export.* (1) Commodities licensed in terms of quantity. Commodities intended for export are licensed in terms of the specific unit of quantity given in the "Unit" paragraph of the CCL entry covering those particular commodities. When a unit of quantity is given in the "Unit" paragraph, that unit of quantity *must* be entered on the license. For example, commodities covered by 1648A must be reported in "lbs."

(2) Commodities licensed in terms of dollar value. If the unit of quantity given in the "Unit" paragraph of the

applicable CCL entry is "$ value", the commodities are licensed in terms of the total dollar value shown on the license. For example, commodities covered by entry 1527A must be reported in "$ value". However, when a commodity is licensed in terms of total dollar value, Export Administration requires that the unit of quantity commonly used in the trade also be shown on the license application. If the application is approved, that same terminology may appear on the license; nevertheless, the quantity of the commodities authorized for export is limited *entirely* by the total dollar value shown on the license.

(d) *Validity of license*—(1) *Twenty-four month validity period.* Unless otherwise stated on the face of the license, an export license is valid for 24 months from the last day of the month during which it is issued; e.g., a license issued on June 11, 1986, would expire on June 30, 1988. The expiration date is shown on the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date. See Part 773 for validity periods for special licenses, Part 777 for validity periods for short supply licenses, and Part 379 for validity periods for technical data licenses.

(2) *Extended validity period.* A validity period in excess of 24 months generally will not be granted for commodities. However, the Office of Export Licensing will consider granting a validity period exceeding 24 months when extenuating circumstances warrant. For example, an extended validity period will generally be granted where the transaction is related to a multi-year construction project, when production lead time will not permit export during the original validity period of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Applicants may request an extended validity period by indicating the desired validity period in the additional information block of Form ITA-622P, and attaching justification and documentation to support the request. The a proved expiration date will be indica ed on the face of the license. For e tensions of the validity period afte the license has been issued, se § 772.12.

(3) *Special provisions.* If special pro visions for any commodity includ terms regarding the validity period o an individual export license, these wil be found in Part 776.

(4) *Revocation, suspensions, or revisions.* Outstanding licenses may be revised, suspended, or revoked, in whole or in part, or the validity periods thereof may be extended or reduced by appropriate orders or regulations.

(e) *Reports.* Any person to whom a validated license has been issued shall file with the Office of Export Licensing such reports as the Office of Export Licensing shall, from time to time, require.

(f) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends a license, the licensee shall return the license immediately to the Office of Export Licensing in accordance with the instructions in § 786.2(d).

(g) *Records.* Any person to whom a validated license has been issued shall retain the license and maintain complete records in accordance with § 386.2(d), including any export licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

[40 FR 27227, June 27, 1975, as amended at 43 FR 56659, Dec. 4, 1978; 46 FR 38349, July 27, 1981; 46 FR 49111, Oct. 6, 1981; 47 FR 5207, Feb. 4, 1982; 47 FR 57678, Dec. 2 1982; 47 FR 58123, Dec. 29, 1982; 51 FR 34587, Sept. 30, 1986; 51 FR 40158, Nov. 5, 1986; 52 FR 664, Jan. 8, 1987; 53 FR 22475, June 16, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 772.10 Duplicate license.

(a) If a license is lost or destroyed, the licensee may obtain a duplicate of the license by submitting a letter to the Office of Export Licensing at the address listed in § 772.4(i) certifying:

(1) That the original license assigned Export License Number ____ issued to (name and address of licensee) has been lost or destroyed;

(2) The circumstances under which it was lost or destroyed;

(3) If the original license is found, the licensee will return either the original or duplicate license to the Office of Export Licensing.

(b) If shipment was made against the original license, those shipments must be counted against what may be shipped under the duplicate license.

(c) Any person to whom a duplicate license has been issued shall retain the duplicate license and maintain complete records in accordance with §§ 786.2(d) and 787.13, including any duplicate licenses (whether used or unused, valid or expired) and all supporting documents and shipping records. The Office of Export Licensing may require submission of such records upon notification.

(Approved by the Office of Management and Budget under control number 0694-0031)

[54 FR 42496, Oct. 17, 1989]

§ 772.11 Amending export licenses.

(a) *Persons authorized to amend licenses.* No amendments or alterations of outstanding export licenses may be made except by the U.S. Department of Commerce or under specific instructions from the U.S. Department of Commerce.

(b) *General provisions.* The Office of Export Licensing will consider for approval a request to amend an outstanding export license for the purpose of conforming it to changes which have taken place in the original transaction, provided that the change is not of such significance as to constitute a new transaction. A licensee may export under the terms of an amendment only after receiving Office of Export Licensing approval in writing of the application to amend.

(c) *Amendments of pending license applications.* A request to amend a pending license application may be submitted at any time. The amendment procedure set forth in this section shall be followed with respect to these requests. The request shall include the applicant's reference number, date of application, commodity, country of destination, case number if known for the purpose of identifying the application, and reasons for the request.

(d) *Changes requiring a new license application.* The following types of changes require a new license application:

(1) Change in country of ultimate destination or ultimate consignee (except as indicated in paragraph (e)(2) of this section); or

(2) Addition of a commodity with a different processing Code from that on the original application.

(3) Changes in a pending application to export COCOM controlled items to Austria, Finland, Korea (Republic of), Switzerland, or COCOM participating countries under the accelerated processing procedure described in § 770.14.

(e) *Changes that may be made by amendment.* The changes that may be made by amending an outstanding license include, but are not limited to, the following:

(1) Purchaser, if the change in purchaser does not also effect a change in ultimate consignee.

(2) Ultimate consignee, if the change is made: (i) To identify correctly the same ultimate consignee named in the license; or

(ii) To add one or more new consignees to an outstanding Project License or Distribution License; or

(iii) To designate a new consignee when the purchaser instructs that shipment be made directly to the ultimate user, provided that all documents required from the ultimate user, such as a consignee/purchaser statement, are submitted to the Office of Export Licensing either with the original application or with the amendment request; or

(iv) To add one or more new consignees to an outstanding individual validated license that was originally issued with multiple consignees.

(3) Intermediate consignee, (i) if the new intermediate consignee is either located in a country other than the country of ultimate destination shown on the license or is located in the country of ultimate destination and an amendment request is submitted in accordance with the provisions of § 786.4(b)(1)(iv); or

(ii) if the Office of Export Licensing specifically requires the amending of a license to show a new intermediate consignee. (See paragraph (f)(6) of this section for shipments unloaded prior to arrival at the country of ultimate destination, that do not require the naming of an intermediate consignee.)

(4) Increase in quantity if it exceeds the permissible shipping tolerances in § 786.7(a).

(5) Increase in price if it exceeds the permissible shipping tolerances in § 786.7(b) and cannot be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, etc.

(6) Change in commodity—provided the Processing Code for any added commodity(ies) is identical to the one assigned to commodities on the existing license.

(7) Extension of the validity of a 24-month license, but only as provided in § 772.12. See Part 773 for extension of special licenses and § 779.5(f)(2) for technical data licenses.

(8) Correction of a clerical error on the part of the Office of Export Licensing.

(9) Correction of a clerical error on the part of the applicant and not covered by paragraph (f) of this section.

(10) Change of licensee (in accordance with the provisions relative to transfer of licenses set forth in § 772.13).

(f) *Changes that require neither amendment nor new license.* The following changes do not require a new license, an approved amendment, or any other notification to the Office of Export Licensing:

(1) Change in applicant's reference number.

(2) Decrease in unit price or total value.

(3) Increase in price or quantity if permitted under the shipping tolerances in § 786.7.

(4) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, etc.

(5) Establishment of unit or total price in conformance with a "price statement" on a validated export license that permits price to be based on the market price at a specified date plus an exporter's mark-up, or like basis.

(6) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the export license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment (see § 786.4(b)(1)).

(7) Change in continuity of shipment by unloading from carrier at a Country Group T or V port (except a port in the People's Republic of China), not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and validated license, provided;

(i) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and validated license;

(ii) The shipment is moving on a through bill of lading;

(iii) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country Group Q, S, W, Y or Z, or a national of any of these countries;

(iv) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(v) The original ocean bill of lading first issued at the port of export is delivered with the shipment to the ultimate consignee.

(8) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license.

(9) Change in Export Control Commodity Number, unit of quantity, unit price, or wording of the commodity description (where necessary only for the purpose of conforming to an official revision in the Commodity Control List). This does not cover an actual change in the commodity to be shipped, or an increase in the price or quantity as described in § 772.11(e) (4), (5) and (6), for which amendments are required.

(g) *Where to file*—(1) *Addresses.*—(i) *Submission by mail.* Mail amendments and related documents to: Office of

Export Licensing, P.O. Box 273, Washington, DC 20044.

(ii) *Hand-carried submissions.* Hand carry amendments and related documents in an envelope with the notation "Case Amendment" on the envelope to: Exporter Assistance Staff, Room 1099, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

(2) *Duplicate request covering same license.* A request for amendment shall not be submitted to the Office of Export Licensing if an identical request to amend the same license is already pending with the Office of Export Licensing.

(h) *Procedure for submitting amendment requests*—(1) *Number of copies.* An amendment request shall be submitted in duplicate on Form ITA-685P[3]. A request for amendment by letter will not be accepted. (See paragraph (h)(4) of this section with regard to emergency situations.)

(2) *Information required.* All numbered items shown on Form DIB-685P must be completely filled in on all copies, unless otherwise stated on the form.

(i) The reasons for requesting the amendment must be clearly stated in the item entitled "Facts Necessitating Amendment." (For amendments to a license covered by an Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, or consignee/purchaser statement, see paragraphs (k) and (l) of this section.)

(ii) In completing the space entitled "Amend License To Read As Follows," the applicant shall identify that portion of the license upon which amendment is requested and insert the proposed change.

(iii) Any person making application for an amendment to an export license (including extension of validity period) shall disclose to the Office of Export Licensing at the time of the request any information regarding prior action n the shipment as explained in 772.7.

(3) *Signature.* The signature of the censee, or an officer or duly authorized agent of the licensee, shall be placed on the original of Form DIB-685P in the item entitled "Signature." When such request is submitted by an officer or an agent authorized by the licensee, who may be a freight forwarder, attorney, or any other authorized individual, the licensee's name shall be shown, followed by the word "BY" and the signature and title of the authorized officer or agent.

For example: Joseph Aloysius Jones, By: Hamilton Newsbold, *Agent.*

(4) *Copy of Export License.* A copy of the license application (Form ITA-622P) or reexport request (Form ITA-699P), Export License (Form ITA-628), and any previous amendment requests related to the application shall be submitted with an amendment request.

(5) *Emergency requests and clearances.* Under emergency conditions, an amendment request may be made by submitting the completed Form ITA-685P in accordance with the instructions in § 772.4(i). The Exporter Assistance Staff will advise exporters who follow this procedure if the amendment is *not* receiving emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

(i) *Action on amendment request by the Office of Export Licensing*—(1) *Approved*—The Office of Export Licensing will validate the yellow copy of an approved Form BXA-685P by imprinting a facsimile of the U.S. Department of Commerce seal followed by the letter "D" and a series of numbers indicating the year, month and day of validation. The yellow copy will be forwarded to the Applicant.

(2) *Returned without action.* When Form DIB-685P, Request for and Notice of Amendment Action, is returned without action, the reason(s) therefor will be indicated on Form DIB-695, Advice on Amendment Request Returned Without Action. All copies of Form DIB-685P with original of Form DIB-695, plus any attachments will be returned to the individual named in the space of Form DIB-685P entitled "Applicant." An amendment request may be resubmitted on the same set of Form DIB-685P where

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[3] Form ITA-685P is printed in triplicate s to provide a copy for the applicant's e.

corrections or documents are required. If the changes are extensive, a complete new set of Form DIB-685P must be submitted.

(3) *Rejected.* When a request is rejected, the reason(s) therefor will be indicated on the duplicate copy of Form DIB-685P, and such copy, plus any attachments, will be returned to the individual named in the space entitled "Applicant."

(j) [Reserved]

(k) *License covered by an Import Certificate or End-Use Certificate*—(1) *Change in party or increase in net quantity not in accordance with current supporting document.* The applicant shall obtain a new or appropriately amended International Import Certificate (§ 775.3 of this subchapter), Swiss Blue Import Certificate (§ 775.4 of this subchapter), Yugoslav End-Use Certificate (§ 775.5 of this subchapter), People's Republic of China End-User Certificate (§ 775.6 of this subchapter), or Indian Import Certificate (§ 775.7 of this subchapter) before submitting a request to amend an export license by proposing to change any party to the transaction named on the license or by increasing the net quantity set forth on the license if the proposed change is not in accordance with the current supporting document covering the license. The original copy of the new or amended certificate shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new or amended certificate (include certificate number, if any, and date) has been received and will be retained the applicant's files or

(B) A facsimile of the new or amen ed certificate (include certific number, if any, and date) has been ceived and the original copy of the c tificate will be obtained and retain in the applicant's files prior to a shipment against the license.

(2) *Change in net quantity in cordance with current supporting do ument.* If a proposed quantitati amendment is in accordance with t current supporting document coveri the license, the request for amen ment shall include the following cer fication:

I (We) certify that this request for amen ment of export license numb ______, if granted, will not exceed t total quantity authorized under the (Na of country) (Import Certificate) (End-U Certificate) number ______.

(l) *License covered by consignee/pu chaser statement*—(1) *Change in par or increase in net quantity not in ac cordance with current consignee/pu chaser statement.* The applicant sha obtain a new consignee/purchase statement before submitting a reque for an amendment of an export licens that proposes a change in the consignee or purchaser in the transactio named in the export license or increases the net quantity set forth o the license, if the proposed change i not in accordance with the curren statement covering the license. Th original copy of the new consignee purchaser statement shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new supporting document (cite date of document) has been received and will be retained in the applicant's files or

(B) A facsimile of the new supporting document (cite date of document) has been received and the original copy of the document will be obtained and retained in the applicant's files prior to any shipment against the license.

Where the amendment request contains only a proposed increase in the net quantity set forth on the license and this proposed change is not in accordance with the current statement covering the license, the applicant has the option of substituting, in lieu of a consignee/purchaser statement, a letter, wire, or cable from the ultimate consignee and purchaser citing the original consignee/purchaser statement and confirming the proposed increase in net quantity.

(2) *Increase in net quantity covered by current consignee/purchaser statement*—(i) *Single transaction statement.* If a request for an amendment of an export license proposes a change in net quantity in the license that is in accordance with the quantity noted on the current consignee/purchaser statement covering the license, the exporter need not obtain a new consignee/purchaser statement. However, the following certification shall be entered on or submitted with the Form BXA-685P:

I (We) certify that this request for amendment of export license number ————, if granted, will not exceed the total covered by the consignee/purchaser statement against which the export license was issued.

(ii) *Multiple transactions statement.* Where the export license is covered by a current Form BXA-629P, Statement by Ultimate Consignee and Purchaser, with Item 2b completed, the applicant does not need to obtain a new consignee/purchaser statement to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be entered on the Form BXA-685P:

I (We) certify that the license(s) described in Item 3 (is) (are) supported by a statement by consignee and purchaser covering multiple transactions.

[40 FR 27227, June 27, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 772.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 46505, Nov. 5, 1990, § 772.11 (k) and (l) were revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 772.11 Amending export licenses.

* * * * *

(k) *License covered by an International Import Certificate, a Swiss Blue Import Certificate, or a Yugoslav End-Use Certificate.* A request to amend an export license covering a commodity subject to an International Import Certificate (§ 775.3), Swiss Blue Import Certificate (§ 775.4), or Yugoslav End-Use Certificate (§ 775.5) that changes any party to the transaction named on the license or increases the net quantity set forth on the license, shall be accompanied by a new or appropriately amended document if the proposal is not in accordance with the document previously submitted. If a proposed quantitative amendment is in accordance with the previously submitted document, the request shall include the following certification:

I (We) certify that this request for amendment of export license number ———, if granted, will not exceed the total quantity authorized under the (*Name of country*) (Import Certificate) (End-Use Certificate) (Import License) number ———.

(l) *Licensees covered by consignee purchaser statement.* A new consignee/purchaser statement shall accompany a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license, if the proposed amendment is not in accordance with the consignee/purchaser statement previously submitted. For a single transaction, a new Form DIB-629P, Statement by Ultimate Consignee and Purchaser with Item 2a completed (or Form DIB-626P or FC-842), or a letter, wire, or cable from the ultimate consignee and purchaser, if applicable, confirming the change, shall accompany a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is

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not in accordance with the consignee/purchaser statement previously submitted. If a proposed quantitative amendment is in accordance with the previously submitted consignee/purchaser statement, the amendment request shall include the following certification:

> I (We) certify that this request for amendment of export license number ———, if granted, will not exceed the total covered by the consignee/purchaser statement against which the export license was issued.

Where the export license is based on a Form DIB-629P with Item 2b completed (or a Form DIB-627P or IC-843), a new consignee/purchaser statement is not required from the consignee or purchaser to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be entered on the Form 685P:

> I (We) certify that the license(s) described in Item 3 (is) (are) supported by a statement by consignee and purchaser covering multiple transactions.

§ 772.12 Special provisions for an amendment to extend the validity period of a license.

A request to extend the validity period of an individual validated license for commodities generally will not be granted, but will be considered by the Office of Export Licensing in the circumstances described in § 772.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request must be made on Form ITA-685P in the same manner as any other amendment request. Licenses issued under the emergency clearance provisions of § 772.4(i) will not be extended.

(a) *Procedure for requesting an extension.* (See Parts 773, 777, and 779 for extension of licenses issued under those parts.)

(1) The amendment request must be submitted at least 30 days prior to expiration of the license;

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request and attach a detailed justification. Also include all supporting documents and any certifications relating to those documents that must be submitted to the Office of Export Licensing in accordance with the provisions of this part 772.

(3) The required length of extension and proposed new expiration date should be indicated on Form ITA-685P in the space entitled "State Specifically the Way the License Should Read."

(b) *New license application to replace expiring or expired license.* Where an application is submitted for a new license to replace an expiring or expired license, the applicant shall (1) indicate on the new application that it is being submitted to replace (expiring) (expired) export license bearing license number (*insert number*), and

(2) Comply with new documentation requirements in the following circumstances:

(i) If current Export Administration Regulations require the application to be supported by a consignee/purchaser statement, import certificate, or end-use certificate, the applicant shall obtain the new supporting document and submit it with the application or retain it on file, as appropriate, (see part 775 of this subchapter on documentation requirements), unless:

(A) The applicant already has retained on file or filed with the Office of Export Licensing, as appropriate, a current supporting document that covers the transaction described in the new license application; and

(B) The applicant submits, with the application, a statement certifying the existence of such a supporting document and citing the number (if any) and date of the supporting document.

(ii) If current Export Administration Regulations require the application for a new license to be supported by any document other than, or in addition to, a consignee/purchaser statement, import certificate, or end-use certificate and that document was not submitted with the application upon which the expiring or expired license was based, that supporting document shall be furnished.

(iii) If the Office of Export Licensing requests the applicant to furnish a specific document, this document must be furnished.

(c) *Action on extension request.* Action on an extension request will be made in the same manner as other amendments. (See § 772.11(l).)

(d) *Export during extended validity period.* A licensee may export after the expiration date of the original license only after receiving Office of Export Licensing approval in writing of the application to extend the validity period. (See §§ 772.11(b) and 786.2(b)(2))

[40 FR 27227, June 27, 1975, as amended at 40 FR 59334, Dec. 23, 1975; 45 FR 57116, Aug. 27, 1980; 51 FR 40158, Nov. 5, 1986; 52 FR 48809, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989; 55 FR 46506, Nov. 5 1990]

EFFECTIVE DATE NOTE: At 55 FR 46506, Nov. 5, 1990, § 772.12 was amended by revising the section heading and paragraphs (a)(2) and (b)(2)(i) and (ii), effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 772.12 Special provisions for an amendment to extend the validity of a license.

* * * * *

(a) * * *

* * * * *

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request. Attach supporting documentation and a detailed justification;

* * * * *

(b) * * *

(2) * * *

(i) If current Export Administration regulations require the application to be supported by a consignee/purchaser statement, a new consignee/purchaser statement must be furnished unless a current Form DIB-629P, Statement by Ultimate Consignee and Purchaser, with Item 2b completed (or a Form DIB-627P or FC-843), is already on file in the Office of Export Licensing;

(ii) If current Export Administration regulations require the application to be supported by any document that was not submitted with the application upon which the license was based, this document must be furnished; and

* * * * *

§ 772.13 Special provisions for transfer of licenses to another party.

(a) *Authorization.* An export license shall not be transferred from the designated licensee to any other party, except by prior written authorization of the Office of Export Licensing. Request authorization to transfer licenses by submitting the information required by § 772.13(c) and (d) to OEL at the address in § 772.1(e).

(b) *When transfer may be authorized.* A transfer of a license may be authorized to a transferee who is subject to the jurisdiction of the United States, is a principal party in interest, and will assume all powers and responsibilities under the license for the control of the shipment of the commodities or technical data out of the United States. Only one transfer of the same license will be approved.

(c) *Information from transferor and form of request*—(1) *Less than 5 licenses.* When requesting the transfer of less than 5 outstanding licenses, the original licensee shall submit:

(i) A completed Form DIB-685P, Request for and Notice of Amendment Action, in duplicate, for each license. In the space entitled "Facts Necessitating Amendment" on Form DIB-685P, give the reasons for the requested transfer and state whether or not any consideration has been, or will be, paid for the transfer. Show the name and address of the proposed transferee in the space entitled "State Specifically the Way the License Should Read";

(ii) A signed letter from the person or firm to whom the license(s) is (are) to be transferred as required by paragraph (d) below; and

(iii) The following certification:

The undersigned hereby certifies that, if license number(s)—————is (are) transferred in accordance with my (our) request, any and all documents evidencing the order covered by this (these) license(s) will be made available upon demand and will be retained by me (us) for a period of two years from the time of the export from the United States, or any known reexport, transshipment, or diversion, or any other termination of the transaction whether formally in writing or by any other means, whichever is later. The undersigned will promptly report to the Office of Export Licensing any material or substantive changes in the terms of the order and any other facts of the export transaction known or reported to the undersigned at any future time by any party to the export transaction.

(Signature of transfer) ____________________
(By) ____________________
(Title) ____________________
(Date) ____________________

(2) *Five or more licenses.* When a transfer would affect 5 or more outstanding licenses, the original licensee shall submit a written request, in duplicate, for such transfer containing the following information:

(i) Either a list of the outstanding license numbers, and case numbers, if different, or a statement that all outstanding licenses in the name of the licensee are to be transferred, and the total number of such outstanding licenses;

(ii) A list showing the case numbers (if known), the applicant's reference numbers, and other information identifying applications pending in the Office of Export Licensing that are to be transferred;

(iii) Name and address of the proposed transferee;

(iv) Facts necessitating transfer;

(v) A statement as to whether any consideration has been, or will be, paid for the transfer; and

(vi) The certification set forth in paragraph (c)(1)(iii) of this section.

(3) *Retention of licenses pending Office of Export Licensing action.* Unless instructed otherwise by the Office of Export Licensing, the applicant will retain the license(s) pending notification by the Office of Export Licensing of the action taken. If the request is approved, the transferor shall forward the license(s) to the transferee together with, or to be joined with, the pertinent validated documentation furnished by the Office of Export Licensing. If the transfer request is disapproved, the license(s) shall either be returned to the Office of Export Licensing or used by the original licensee if he so chooses and has retained the legal and operational capacity fully to meet the responsibilities imposed by the license.

(4) *Additional proof.* In addition to the information required under paragraphs (c) (1) and (2) of this section, the original licensee must identify by name the legal document (certificate, agreement, etc.) or other authority by which the new firm name is legally established, the new corporation or firm created, or the assets transferred, showing the effective date of such document and the state where filed or recorded.

(d) *Information from transferee.* The request for transfer from the original licensee must be accompanied by a signed letter from the person to whom the license is being transferred, stating:

(1) That the transferee is a principal party in interest in the transaction covered by the license, or is acting as agent for a principal party in interest;

(2) That the transferee is subject to the jurisdiction of the United States;

(3) That the transferee assumes all powers and responsibilities under the license for the control of the shipment of the commodities or technical data out of the United States;

(4) Whether any consideration has been, has not been, or will be paid for the transfer;

(5) The name and address of the foreign principal in instances where the transferee will make the export as agent on behalf of a foreign principal; and

(6) If the license is to be used by the licensee's subsidiary or firm, or if the licensee transfers to the new exporter all, or a substantial portion, of his assets or business, the transferee must certify that the legal authority changing the exporter imposes on the transferee the responsibility to accept and fulfill the obligations of the transferor under the transactions covered by the license.

(e) *Notification of transfer*—(1) *Less than 5 licenses.* When a request for the transfer of less than 5 outstanding licenses is approved, the Office of Export Licensing will validate all copies of approved Form(s) DIB-685P by imprinting, in the space entitled "Validation," a facsimile of the U.S. Department of Commerce seal followed by the letter "D" and a series of numbers indicating the year, month, and day of validation. A copy will be forwarded to the individual named in the space entitled "Applicant." If the request is returned without action, the reason(s) therefor will be indicated on Form DIB-695, Advice on Amendment Request Returned Without Action. All copies of Form DIB-685P, plus any attachments, will be returned to the individual named in the space entitled "Applicant." Any transfer request returned without action may be resubmitted on the same set of Forms DIB-685P where corrections or documents are required. If the changes are extensive, a complete new set of Forms DIB-685P must be submitted. If a request is rejected, the reason(s) therefor will be indicated on the duplicate copy of Form DIB-685P, and such copy, plus any attachments, will be returned to the individual named in the space entitled "Applicant."

(2) *Five or more licenses.* When a request to transfer 5 or more outstanding licenses is approved, the Office of Export Licensing will notify the transferor by returning to him a validated copy of his request. If a request is rejected or returned without action, the eason will be shown in a letter to the riginal licensee.

40 FR 27227, June 27, 1975, as amended at 7 FR 15110, Apr. 8, 1982; 52 FR 48809, Dec. 8, 1987. Redesignated at 53 FR 37751, Sept. 8, 1988 and amended at 54 FR 6644, Feb. 4, 1989]

UPPLEMENT NO. 1 TO PART 772—INSTRUCTIONS FOR PREPARING APPLICATION FOR A VALIDATED LICENSE

Item 1. Enter the name and telephone imber of the person who can answer quesons about the commodities or other asects of the application.

Item 2a. Place an (X) in appropriate ock(s) when other form(s) are attached.

Item 2b. Identify document(s) on file by acing an (X) in the appropriate block(s). ese document(s) are to be retained by the plicant, consistent with the provisions of 87.13, for Country Groups S and V cept the People's Republic of China). All er supporting documentation must be mitted with the application.

Item 3. Enter original case number if the inal case was returned without action.

Item 4. Complete only if stipulated in the port Administration Regulations.

Item 5. Applicant as defined in the Export ministration Regulation § 772.3(b)(1).

Item 6. The ultimate consignee in the ntry of ultimate destination is the party o will actually receive the material for the end-use designated in Item 12. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as an ultimate consignee, but should be listed in Item 8 as an intermediate consignee. GOVERNMENT PURCHASING ORGANIZATIONS ARE ACCEPTABLE CONSIGNEES IN THOSE INSTANCES WHEN THE COMMODITIES OR TECHNICAL DATA DESIGNATED IN ITEM 9(b) ARE TO BE TRANSFERRED TO THE ULTIMATE END-USER, PROVIDED ACTUAL END-USE(S) ARE CLEARLY IDENTIFIED IN SUPPORTING DOCUMENTATION.

NOTE: If a temporary export, applicant should be shown as ultimate consignee in care of person or entity who will have control of the goods abroad. Do NOT leave this item blank.

Item 7. The purchaser is the party abroad who has entered into the export transaction with the applicant or order party. If same as ultimate consignee, place "X" in the block located after "Same as Item #6." Do NOT leave this item blank.

Item 8. An intermediate consignee is any intermediary in a foreign country who participates as an agent for the exporter or for the purchaser or ultimate consignee to effect delivery of the export to the purchaser or ultimate consignee. All known intermediate consignees must be named. If more than one, state in Item #15. If the same as purchaser, place an "X" in the block located after "Same as Item #7". In none state "None"; if unknown, state "Unknown" in the same space. Do NOT leave this space blank.

NOTE: For Items 9(a) through 9(d)—Use Supplement Form BXA 622P-A if additional space is needed.

Item 9(a). Give the quantity to be shipped, as identified in the Export Control Commodity Number (ECCN) located in Supplement No. 1 to 799.1. If no specific unit of quantity is required by the entry or footnote, show the unit of quantity commonly used in the trade.

Item 9(b). PDR-Expressed in megabits per second. ONLY insert numerical value in PDR column. If not applicable insert N/A. Place model # before description, followed by a colon (:). End description with ECCN paragraph reference. Do NOT put model number in 9(b) on form if model number exceeds 30 characters. Instead type the word "various," followed by a colon (:). Put the model number(s) on a plain sheet of paper with the Application Control Number, and attach to the application.

Describe commodities or technical data. Furnish additional details as prescribed by the Export Administration Regulations when necessary to identify the specific items to be so classified. Include characteristics shown in the specific ECCN, such as basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc. These characteristics must be identified for the commodities or technical data proposed for export, which may be different from the characteristics described in the promotional brochure(s). Where the specific ECCN entry states "specify by name," list by name on the application all the commodities to be included in the shipment. Include the ECCN paragraph reference at the end of the description. Processing Code: Enter the two character processing codes designated in the ECCN. Only one processing code may be entered per application.

Item 9(c). Enter the Export Control Commodity Number that corresponds to the commodity adjacent to the corresponding commodity description.

Item 9(d). Enter the unit price except where a large variety of products within a single ECCN makes such a breakdown extremely difficult. In such cases show only total price. Give the fair market value in U.S. dollars. Round to the nearest dollar the amount entered in the total price column. Give the exact value if less than $0.50. Where the normal trade practice makes it impractical to establish a firm contract price, state in Item 15 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

Item 10. The Office of Export Licensing will transmit the license to the party designated in this space. Leave blank if the license is to go to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Item 11. Provide manufacturer name of the total or assembled commodity(ies). Do NOT include address. If more than one name, separate names by commas. If additional space is needed, continue in Item #15.

NOTE: Leave this item blank only if the ECCN is 1564.

Item 12. Provide a complete and detailed description for the end-use intended by the ultimate consignee. If additional space is needed, use Supplemental Form BXA-622P-A or B.

Item 13. Complete only if end-user is not the ultimate consignee named in Item 6. If more than one end-user, insert the word "various" in the space and use Supplemental Form BXA-622P-B.

Item 14. A Foreign Availability Submission (FAS) may be submitted with an export license application. The applicant may also provide a FAS to the Office of Foreign Availability up to 90 days after a license denial on National Security grounds. See part 791 of the Export Administration Regulations before providing submission.

Item 15. When information is a continuation of a previous item(s) first state the item number(s). Do NOT put informat from item 9(a) through 9(d) in this spa Enter additional data pertinent to the tra action as required by the Export Admi tration Regulations. Include special cert cations, names of parties in interest not d closed elsewhere, such as foreign princi or supplier, explanation of documents tached, etc. If the application represents transaction previously rejected, give pr case number issued by the Office of Expo Licensing. Use Supplemental Form BX 622P-A or B if additional space is needed.

Where part 775 of this subchapter permi a supporting document to be retained in th applicant's files, the applicant shall certi in Item 15 on the application form, or on attachment thereto, either: (1) That the propriate supporting document (cite doc ment number, if any, and date) has been r ceived and will be kept on file or (2) that facsimile of the supporting document (ci document number, if any, and date) h been received and that the original will obtained and retained in the applica files prior to any shipment against the cense. Where the applicant is required submit a supporting document to the Offi of Export Licensing, this document must attached to the application form and statement referencing the attached doc ment should be included in Item 15.

Item 16. All three spaces must be comple ed and THE APPLICATION MUST B MANUALLY SIGNED by the applicant duly authorized agent of the applicant. I signed by agent of the applicant, show titl and firm name or agent. (Rubber-stampe or other facsimile signatures are not accep able.)

Item 17. Where the applicant did not re ceive the order directly from the foreig purchaser or ultimate consignee named i the application, or through his or her agen abroad, the party in the United States tha conducted the negotiations with the forei party and originally received the order (th order party) must complete this item an sign the application.

[54 FR 6644, Feb. 14, 1989, as amended at 5 FR 46506, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 4650 Nov. 5, 1990, Supplement No. 1 to part 77 was amended by adding a second undesi nated paragraph at the end of "*Item 15*", ef fective February 4, 1991.

PART 773—SPECIAL LICENSING PROCEDURES

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773.2 Project license.

Sec.
773.3 Distribution license.
773.4 [Reserved]
773.5 Humanitarian license procedure.
773.6 [Reserved]
773.7 Service Supply Procedure.
773.8 Aircraft and Vessel Repair Station Procedure.
SUPPLEMENT NO. 1 TO PART 773—COMMODITIES EXCLUDED FROM CERTAIN SPECIAL LICENSE PROCEDURES
SUPPLEMENT NO. 2 TO PART 773—COMPUTER—CONSIGNEE DESTINATIONS (LIST A)
SUPPLEMENT NO. 3 TO PART 773—COMPUTER—CONSIGNEE DESTINATIONS (LIST B)
SUPPLEMENT NO. 4 TO PART 773—SPECIAL DISTRIBUTION LICENSE RESTRICTIONS FOR CERTAIN COMMODITIES INCLUDED IN THE COMMODITY CONTROL LIST
SUPPLEMENT NO. 5 TO PART 773—INSTRUCTIONS FOR DISTRIBUTION LICENSE APPLICANTS WHEN COMPLETING FORM BXA-622P
SUPPLEMENT NO. 6 TO PART 773—INSTRUCTIONS FOR DISTRIBUTION LICENSE APPLICANTS WHEN COMPLETING FORM ITA-6052P
SUPPLEMENT NO. 7 TO PART 773—KINDS OF COMMODITIES THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER § 773.5
SUPPLEMENT NO. 8 TO PART 773—OTHER COUNTRIES SUBJECT TO SPECIAL PROVISIONS

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 373 was redesignated as Part 773 at 53 FR 37751, Sept. 28, 1988.

§ 773.1 Introduction.

In order to facilitate the export of commodities requiring a validated license, a series of special licensing procedures is established that may be used, when appropriate, in lieu of the individual export license, as set forth in Part 772 of this subchapter.

(a) *Special limitations.* (1) *Limitations on exports and reexports to South Africa.* Consistent with U.S. policy toward the Republic of South Africa, as set forth in § 785.4(a), the special licensing procedures in this Part 773 may not be used by any U.S. exporter or approved consignee to

(i) Export or reexport arms, munitions, or military equipment or materials (including materials, machinery or technical data for their manufacture and maintenance) to South Africa (See Supplement No. 2 to Part 779);

(ii) Export or reexport any commodity or technical data for delivery directly or indirectly to or use by or for military or police entities in these destinations. This includes commodities and technical data for purposes of servicing equipment owned, controlled or used by or for such entities; or

(iii) Export or reexport of any computer covered by CCL entry 1565A or 6565G, or export or reexport of goods intended to service or manufacture computers (including, but not limited to, commodities covered by CCL entry 6594F) to or for use by or for apartheid-enforcing entities of the Government of the Republic of South Africa identified in Supplement No. 1 to Part 785.

(iv) Export or reexport any commodity to a nuclear production or utilization facility (as defined in § 770.2 of the EAR) in the Republic of South Africa.

(2) *Certifications required.* To assure compliance with the limitations set forth in paragraph (a)(1) of this section by foreign consignees approved under Project and Distribution licenses, distributors approved under the Distribution License procedure, and U.S. exporters and service facilities approved under the Service Supply License (SL) procedure, the appropriate certifications described in paragraphs (a)(2) (i) and (ii) of this section shall be submitted to the Office of Export Licensing. The appropriate certification must be submitted in support of special licenses valid as of February 16, 1978, before additional commodities may be shipped to the foreign parties concerned, and certifications must be submitted before new or pending applications for special licenses will be considered.

(i) *Sale to and servicing in the Republic of South Africa.* The following certification is to be completed by resellers and end-users approved under the Distribution License procedure who are located in the Republic of South Africa or are authorized to reexport to the Republic of South Africa, and U.S. exporters and service facilities approved under the Service Supply (SL) procedure to service equipment in the Republic of South Africa:

> "I (We) certify that commodities received under this (enter Distribution or Service Supply) License will not be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa or used to service equipment owned, controlled or used by or for these entities."

(ii) *Production of foreign-made end products for sale to the Republic of South Africa.* The following certification is to be completed by all foreign consignees of Project and Distribution licenses who have been authorized to use U.S.-origin parts in the manufacture of foreign-origin end products intended for export:

> "I (We) certify that the commodities received under this (enter Project or Distribution) license will not be used in the production abroad of commodities that will be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa."

(b) *Relationship to foreign laws.* No authority granted under the provisions of this part to reexport, resell, distribute, transfer, divert, or tranship a commodity shall in any way relieve any person from his responsibility to comply fully with the laws, rules, and regulations of the country from which the commodity is to be reexported or of any other country having authority over any phase of the transaction. Conversely, no foreign law, rule, regulation, or authorization in any way relieves any person from his responsibility to obtain such authorization from the Office of Export Licensing as may be required by the Export Administration Regulations.

(c) *Effect of other regulations.* Insofar as consistent with the provisions of this part, all of the provisions of the Export Administration Regulations shall apply equally to applications for licenses and licenses issued under this part.

(d) *OEL mailing address.* All app cations, reports or requests submitt to the Office of Export Licensi under this Part 773 should be maile to Office of Export Licensing, P.O Box 273, Washington, DC 2004 unless the regulation indicates a other address.

(e) *OEE mailing address.* All docu mentation and reports submitted t the Office of Export Enforcemen under this Part 773 should be maile to: Office of Export Enforcement, P.O Box 7138, Washington, DC 20044.

(f) *Administrative actions.* Failur to strictly comply with all condition and requirements applicable to any special licensing procedure describe in this Part 773 by license holders or consignees increases the risk of diversion contrary to U.S. national interests. Accordingly, if OEL is not satisfied that such conditions and requirements are being complied with and maintained, or that control systems employed by parties to such licenses are adequate, OEL may, in addition to any enforcement action that may be taken to impose sanctions if a violation of the Export Administration regulations is found, take an licensing action it deems appropriate, including the following:

(1) Suspend privileges under the special license in whole or in part or impose any conditions thereon;

(2) Revoke the special license in whole or in part;

(3) Delete or restrict foreign consignees;

(4) Restrict commodities that may be shipped under the special license;

(5) Require that certain exports or reexports be individually authorized by OEL;

(6) Restrict parties to whom consignees may sell; or

(7) Require that a license holder provide an audit report to OEL of selected consignees or overseas operations.

Actions taken pursuant to this paragraph (f) may be appealed under Part 789.

[35 FR 9136, June 12, 1970, as amended at 43 FR 7312, Feb. 22, 1978; 45 FR 45897, July 8, 1980; 47 FR 15110, Apr. 8, 1982; 47 FR 40539, Sept. 15, 1982; 48 FR 17583, Apr. 25.

1983; 50 FR 21566, May 24, 1985; 50 FR 23666, June 5, 1985; 50 FR 47364, Nov. 18, 1985; 51 FR 18774, May 22, 1986; 51 FR 30633, Aug. 28, 1986; 52 FR 2106, Jan. 20, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 33897, Aug. 20, 1990]

§ 773.2 Project license.

A Project License Procedure is established that authorizes exports for a period of 1 year for use in specified activities. (An extension of a Project License may be valid for a period up to 2 years.)

(a) *Commodities, technical data, and activities eligible for project license.* The Project License Procedure is applicable if:

(1) The commodities to be exported are covered by entries in the Commodity Control List under at least four Commodity Processing Numbers in which the first two digits of each differ from the first two digits of the other three Commodity Processing Numbers. (For example, Processing Numbers 411, 421, 612, and 621 would meet this requirement, while Processing Numbers 411, 412, 413, and 418 would not meet the requirement);

(2) At least 25 individual validated licenses would be needed to export the proposed commodities; and

(3) The license, if granted, would be used for one of the following activities:

(i) A substantial project representing a capital expansion, either a new facility or expansion of an existing facility; or

(ii) A program for supplying maintenance, repair, and operating supplies to serve an existing facility; or

(iii) A program for supplying materials to be used in the production of other commodities for sale.

(b) *Commodities, technical data, and activities not eligible for Project License.* The Project License procedure is subject to the South African limitations in § 773.1. In addition, the procedure does not apply if:

(1) The commodities are listed in Supplement No. 1 to this Part 773;

(2) The commodities are intended for resale in the form in which they were exported from the U.S.;

(3) The project is located outside of the countries listed in Supplement No. 2 to Part 773 and the commodities are related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonimum (see § 778.3).

(4) The technical data are not generally available to the public (see General License GTDA, § 779.3) and relate to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 779.4(c)(1) or other nuclear-related commodities as listed in § 779.4(c)(2) through (9).

(5) The commodities are electronic, mechanical, or other devices as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications;

(6) The commodities identified in the Commodity Control List (CCL) under Export Control Commodity Numbers (ECCNs) listed in § 776.18 of this subchapter as controlled for nuclear weapons delivery purposes and technical data described in supplement No. 4, paragraph (4), of part 779 of this subchapter;

(7) The commodities are listed in a Supplement to Part 777 as being under short supply controls;

(8) The commodities are aircraft parts and accessories covered by § 790.7; or

(9) The project involves shipments to Libya, Iran or Syria.

(c) *Application procedure*—(1) *General.* The preparation of an initial application for a Project License requires a substantial amount of work by the exporter. Therefore, a prospective applicant may wish to consult the Office of Export Licensing in advance to obtain a preliminary determination of the applicability of the project licensing procedure and to obtain advice as to any special information that may be required.

(2) *Documents required.* An applicant for a Project License (OMB ap-

proval No. 0625-0002) shall submit the following documents to the Office of Export Licensing at the address in § 773.1(d):

(i) [Reserved]

(ii) Form ITA-622P, Application for Export License, prepared in accordance with the provisions of § 772.4(a)(4), except that the applicant shall:

(A) Insert Project License in Item 4, "Special Purpose."

(B) Insert "See attached list" in Item 6, "Ultimate Consignee", if there is more than one ultimate consignee, and attach to the application a list, in duplicate, of the country(ies) of ultimate destination followed by the name(s) of the ultimate consignee(s), both in alphabetical order. For example:

France: Central Corp.; Development Corp.
Mexico: Consolidated Copper; Fairway Limited

(C) Insert the following in Item 9(b), "Commodity Manufacturer's Description of Commodity":

> Articles and materials set forth on the attached statement of estimated requirements constitute the known requirements of commodities (*and technical data, if applicable*) requiring validated licenses for the (*insert name of program or project*).
>
> I (We) hereby certify that if a license is granted in response to this application: (a) No commodities (*or technical data, if applicable*) will be exported under the license unless specifically required for the (program) (project); and (b) after export, the commodities (*and technical data, if applicable*) will not be disposed of or used for any purpose other than that stated in this application.

(iii) Form ITA-6052, Statement by Foreign Consignee in Support of Special License Application. This form is required from each ultimate consignee named in the license application, including subsidiaries, affiliates, branches, or other associated firms of the applicant, if the applicant and the consignee are separate legal entities. It is *not* required where the applicant is the same person as the ultimate consignee. Item 5 of Form ITA-6052 need not be completed, but the appropriate box(es) in Item 6 must be checked. Three copies of the form shall be manually signed by the ultimate consignee, or by a responsible official of the ultimate consignee's firm who has:

(A) Personal knowledge of the information included in the statement;

(B) Authority to bind the ultimate consignee; and

(C) The power and authority to control the use and disposition of the licensed commodities and technical data in the country of ultimate destination. The authority to sign this form may *not* be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his official position with the ultimate consignee. The official signing the statement shall include his official title with his signature.

(iv) Statement of requirements:

(A) *Estimated requirements.* A statement shall be submitted in duplicate specifying the estimated requirements for commodities requiring a validated license which are expected to be exported during the first 1-year validity period and any commodities exportable under General License GLV which the licensee prefers to ship under the Project License. A similar statement shall be submitted in support of a request for an extension of a Project License showing the estimated requirements expected to be exported during the requested extension period, which may be of up to 2 years' duration. (See paragraph (e)(1)(i).)

(B) Descriptive categories. Use only the capitalized Group titles appearing in the Commodity Control List (Supplement No. 1 to § 399.1) to describe the commodities, and break down the requirements for each commodity into sub-totals and grand totals for Country Group T, Country Group V, and another entry for all other Country Groups. (See example below.)

EXAMPLE: VALIDATED LICENSE REQUIREMENTS FOR FIRST YEAR

Commodity category	Country Group T	Country Group V	Other country groups	Subtotal
Group 1—Chemical and petroleum equipment	$50,000	$100,000	$20,000	$170,000
Group 6—Metals, minerals and their manufacturers	130,000	180,000	25,000	335,000
Group 7—Chemicals, metalloids, petroleum products and related materials	75,000	125,000	25,000	225,000
Grand totals	255,000	405,000	70,000	730,000

(C) *Capital expansion project.* An additional statement, in duplicate, shall be submitted if the commodities are for use in a project representing a capital expansion. This statement shall cover the estimated requirements of commodities requiring a validated license that are expected to be exported during the period required for the full completion of the project.

(D) *Value limitation.* If a Project License is issued, the estimated values constitute a limit only on the grand total licensed. It is not a limit on the subtotals. For example, in the following illustration an amendment is necessary only if the grand total value of all shipments under the Project License to all Country Groups will exceed $705,000.

(E) *Technical data.* The following information regarding any exports of technical data related to the project shall accompany the statement of estimated commodity requirements:

(*1*) A detailed description of the sub- ect matter or substance of the techni- al data and its relationship to the roject;

(*2*) Processes involved, if any; and

(*3*) The form in which the informa- ion will be furnished to the foreign onsignee (e.g., blue prints, specifica- ons, technical aid contracts, manu- cturing agreements, patent licensing rangements, instruction, or train- g).

(v) Comprehensive narrative state- ent: The comprehensive narrative atement of explanation by the appli- nt shall include, as a minimum:

A) *Qualification.* An explanation the applicant of how the proposed oject License application qualifies der the criteria described in para- aph (a) of this section.

(B) *Description.* A detailed description, including the nature and scope of the project, and the estimated completion date.

(C) *Business relationship.* The nature and duration of the business relationship between the applicant and the consignee(s) named in the Project License application. If there are any corporate or other ownership relationships between the parties, these relationships shall be fully disclosed.

(vi) *Special certification.* The certification required by § 773.1(a)(2)(ii) is required from each ultimate consignee that produces or intends to produce commodities for export.

(d) *Action by Office of Export Licensing on license applications*—(1) *Approved license application.* When an application for a Project License is approved, the covering export license will be similar to validated license described in § 772.9, with the following exceptions:

(i) *Validation.* The license will be validated by stamping in the license number space a facsimile of the U.S. Department of Commerce seal the letter "D," and a series of numbers to indicate the year, month, and day on which the license was validated. For example, a validation stamp which reads "D0-110" indicates that the license was validated in the year 1970 (0), in the month of January (1), and on the 10th day of the month (10).

(ii) *License number.* The license number assigned to the project will be indicated immediately below the validation stamp. This will be a four-digit number prefixed by the letters DL, and suffixed by a one-letter code indicating the Office of Export Licensing licensing division to which the project was assigned (that is: "C" for Capital

Goods Division; "P" for Production Materials and Consumer Products Division; and "S" for Scientific and Electronic Equipment Division).

(2) *Description of Commodities or Technical Data.* Instead of a specific description of quantities, kinds, or values of commodities and technical data, one of the following statements will appear in Item 9(b) on the license:

(i) If commodities only:

> This license authorizes export of commodities requiring a validated license subject to the specific limitations set forth in the Export Administration Regulations and on this license.

(ii) If commodities and technical data:

> This license authorizes export of commodities and technical data requiring a validated license subject to the specific limitations set forth in the Export Administration Regulations and on this license.

If any special conditions are imposed on the use of a specific Project License that are more restrictive than the general conditions provided in the Export Administration Regulations, these conditions will either be set forth on the license or the licensee will be advised by other means.

(3) *Rejected applications.* When the Office of Export Licensing intends to reject an application for a Project License, it will notify the applicant in writing and give the reason for the intended rejection in accordance with the provisions of § 770.13(j). The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the rejected Project License application.

(4) Form ITA-6052. Concurrently with the approval of a Project License application, two validated copies of each approved Form ITA-6052 will be sent to the U. S. exporter. One copy shall be retained by the exporter, and one copy shall be sent by the exporter to the approved consignee.

(e) *Extensions and amendments of project licenses*—(1) *Extensions*—(i) *Form to use.* Requests to extend an existing Project License shall be submitted on a Request for and Notice of Amendment Action, Form DIB-685P, supported by the following certifi tion:

> I (We) certify that all the facts and int tions set forth in our previous applicati remain the same, except (enter the w "none," or specify the changes).

This extension will be valid for period of 2 years unless a shorter v lidity period is requested. In the yea when the exporter is not entitled t file the request for extension b amendment, a complete new applica tion must be submitted in accordanc with the provisions of paragraph (c)(2 of this section.

(ii) *When to apply.* An extension request should be submitted to the Office of Export Licensing from 60 to 90 days before the expiration date in order to avoid interruption of shipments under the license.

(iii) *Action by Office of Export Control.* Each extension request is analyzed by the Office of Export Licensing as to the past activity of the project to determine whether an extension is justified. Prior to asking for an extension the licensee should examine his own records to see if the criteria described in paragraph (a) of this section were met during the initial validity of the license. If not, the licensee should apply for an individual or other appropriate type of license instead of an extension of the Project License. When action has been taken by the Office of Export Licensing, this form will be returned to the licensee for retention in his files.

(2) *Amendments*—(i) *Form to use.* All requests for amendment shall be submitted on Form DIB-685P in the usual manner (see § 772.11), including those requests to extend the validity period (see paragraph (e)(1) of this section).

In those years when extension by form IA-763 is not allowed, requests to amend expiring project license by extending the validity period must be submitted on a complete new application in accordance with the provisions of paragraph (c)(2).

(ii) *New consignee.* Where an additional ultimate consignee is proposed, the request shall be accompanied by a statement from the proposed ultimate consignee and the U.S. exporter setting forth the information required by paragraphs (c)(2)(iii) and (v)(*c*) of this section.

(iii) *Increase in amount authorized.* Requests to increase the amount authorized on the Project License may be submitted on a Request for and Notice of Amendment Action, Form DIB-685P, at any time during the validity period of the license. No amendment is needed to add a commodity section or change the total estimated value of a commodity section unless the grand total value of all shipments shown in the statement of estimated amounts needed will be exceeded.

(iv) *Addition of technical data.* If an amendment request proposes adding technical data, the Form FC-763 shall be accompanied by: a statement from the U.S. exporter setting forth the information required by paragraph (c)(2)(iv)(*e*) of this section, a Form FC-988, Statement by Ultimate Consignee in Support of Project License Application, from each ultimate consignee who will receive the data, as described in paragraph (c)(2)(iii) of this section and the following certification:

> I (We) certify that if the request for amendment of Project License No.———is granted, the technical data will be used only in connection with the (program) (project) and after export will not be disposed of or used for any other purpose than that stated in this request.

(v) *Transfer of license.* A request to transfer a Project License is handled in the same manner as a request to transfer any other license. See § 772.13 of this subchapter.

(3) *Amendments not required.* No amendment is needed to add a commodity section or change the total estimated value of a commodity section unless the grand total value of all shipments shown in the statement of estimated amounts needed will be exceeded.

(4) *Action by Office of Export Licensing on extensions or amendments to project licenses*—(i) *Approval.* When a request to amend or extend a project license is approved, the form FC-419 or IA-763 will be validated as de-cribed in §§ 772.11 and 772.12 and a opy returned to the licensee. The ap-roved form will show any changes hat may have been made in the licensee's request, or any special conditions that may have been added.

(ii) *Rejection.* When the Office of Export Licensing intends to reject a request for extension, it will hold the original of Form ITA-622P or BXA-685P and return the duplicate and triplicate copies to the applicant. The Office of Export Licensing will notify the applicant in writing of the reasons for the intended rejection in accordance with the provisions of § 770.13(j).

(f) *Export clearance*—(1) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Project License shall be prepared in accordance with standard instructions. Although the Project License and amendments describe the commodities only by commodity groups, commodity descriptions on the Declaration shall show specifically the commodity description conforming to the applicable Commodity Control List description and incorporating any additional information where required by Schedule B; *e.g.*, type, size, name of specific commodity, etc. In addition, the Declaration shall include the Project License number. A copy of the Shipper's Export Declaration shall be prepared and be retained by the exporter for recordkeeping purposes for a period of five years (see § 787.13(e)). The Office of Export Licensing may require submission of copies of the Shippers Export Declarations upon notification.

(2) *Mail shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 386.1(b) of this chapter.

(3) *Shipments exportable under General License GLV.* Notwithstanding any statement appearing on a Project License, a Project License holder may use either his Project License or General License GLV to export commodities which meet the provisions of General License GLV. The Project License, however, may not be used for shipments which can be made under any other general license.

(g) *Reexports.* Commodities and technical data exported under a Project License may be reexported between ultimate consignees covered by the terms of the Project License without obtaining specific approval from the Office of Export Licensing.

(h) *Application for other validated licenses*—(1) *Exporter holding a Project License.* An exporter holding a Project License shall not apply for, nor will the Export Administration issue to him, an individual or any other type of validated license for any transaction involving the licensed project, except for export of shipments described in paragraph (b) of this section.

(2) *Other exporters.* Where a valid Project License is in force, the Office of Export Licensing will not issue another Project License to cover shipments to the licensed project or program. If an exporter intends to make shipment to a project or program for which another exporter already holds a Project License, he may apply to the Office of Export Licensing for an individual license or any other appropriate type of validated license except a Project License.

[35 FR 9137, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting § 773.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

2. At 54 FR 6644, Feb. 14, 1989, § 773.2(e)(2)(iii) was amended by revising "Form ITA-685P" to read "Form BXA-685P". Form ITA-685P does not appear in this paragraph; Form DIB-685P does. The DIB prefix is one which preceded ITA and should have been replaced already. The agency will publish in the Federal Register to make the intended change.

EFFECTIVE DATE NOTE: At 55 FR 47051, Nov. 9, 1990, § 773.2 (f)(1) was revised, effective February 7, 1991. For the convenience of the user, the superseded text follows:

§ 773.2 Project license.

* * * * *

(f) *Export clearance*—(1) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Project License shall be prepared in accordance with standard instructions. Although the Project License and amendments describe the commodities only by commodity groups, commodity descriptions on the Declaration shall show specifically the commodity description conforming to the applicable Commodity Control List description and incorporating any additional information where required by Schedule B; *e.g.*, type, size, name of specific commodity, etc. In addition, the Declaration shall include the Project License number, and one additional copy shall be prepared for each shipment. These copies shall be forwarded at the end of each month to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

* * * * *

§ 773.3 Distribution license.

A Distribution License procedure is established that authorizes exports of certain commodities under an international marketing program, generally to three or more consignees that have been approved in advance as foreign distributors or users. This procedure is a special privilege reserved for firms with a thorough knowledge of and experience with the Export Administration Regulations, and an internal control mechanism to assure strict compliance with the requirements of the license. Only firms that demonstrate the ability to adhere to the Distribution License requirements may participate. Thus, there is not an automatic privilege to participate in the Distribution License procedure. Participants must establish and maintain eligibility and assume responsibility for their activities under the license. License holders and their approved consignees will be audited at intervals to assure that the Distribution License procedure is being used properly. The Distribution License procedure is subject to the limitations in § 773.1.

(a) *Eligible countries and end-use restrictions.* (1) The Distribution License procedure may authorize exports and reexports to:

(i) All countries in Country Group T, and

(ii) All countries in Country Group V, except Afghanistan, Iran, Syria and the People's Republic of China.

(2) The Distribution License procedure may not be used for export or delivery of commodities to nuclear end-users or for nuclear end-uses outside of countries listed in Supplement No. 2 or Supplement No. 3 to Part 773. For purposes of this paragraph (a)(2) only, a "nuclear end-use" is any activity involved in the design, construction, fabrication, operation or maintenance of

a nuclear reactor or power plant, uranium exploration, mining or milling operations, uranium fuel fabrication, particle accelerators and other high energy physics research, and nuclear waste management or storage facilities; and a "nuclear end-user" is any entity, governmental or private, that either directly or indirectly is involved in any of the activities described above. It is the responsibility of any person supplying commodities to an end-user under the Distribution License to determine if the end-user is directly or indirectly involved either in a nuclear end-use as described above, or in sensitive nuclear end-uses described in (b)(1)(i) of this section, that require for all destinations individual validated licenses pursuant to § 778.3. Caution should be exercised in evaluating the end-uses before processing orders for commodities under a Distribution License to institutes of science and technology, radiological facilities, conventional weapons and armaments research and development establishments, and other military entities.

(b) *Ineligible or restricted commodities.* (1) The following commodities are ineligible for export or reexport under the Distribution License procedure and must be shipped under an individual validated license or specific reexport authorization:

(i) Commodities that will be used outside of the countries listed in Supplement No. 2 to Part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3;

(ii) Commodities listed in Supplement No. 1 to Part 773 (except as authorized by a footnote);

(iii) Electronic, mechanical or other devices, as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications;

(iv) The commodities controlled to limit the proliferation of missiles and described in those Export Control Commodity Numbers listed in § 776.18 of this subchapter;

(v) Commodities listed in a Supplement to Part 777 as being under short supply controls;

(vi) Aircraft parts and accessories covered by §§ 790.6 and 790.7; and

(vii) Commodities intended for firms that the license holder or consignee knows or has reason to know are controlled in fact by government-controlled entities of Country Groups Q, S, W, Y, or Z, or Afghanistan.

(2) Commodities listed in Supplement No. 4 to Part 773 are subject to certain restrictions when exported under a Distribution License. Certain commodities in the supplement, indicated by footnote, may be exported under the Distribution License only when approved in advance for use by a specific end-user consignee or a customer of a consignee approved as an end-user. Other commodities in the Supplement, indicated by footnote, may be exported to a country *not* listed in Supplement No. 2 or 8 to Part 773 only when approved in advance for use by a specific consignee or customer of a consignee approved as an end-user. Customers within countries listed in Supplement No. 2 or 8 need not be approved in advance for this latter group of commodities. To obtain approval, the distribution license holder will send to the Office of Export Licensing (OEL) a listing of customers he/she wishes to be approved for this Supplement 4 procedure in triplicate. OEL will validate the listing and return it to the distribution license holder. If OEL approves, the applicant and approved foreign consignees will be authorized to supply only those Supplement No. 4 items listed and approved, and only to end-users approved by OEL.

(c) *Eligible parties*—(1) *Applicant/Licenseholder qualifications.* The applicant must establish and maintain its eligibility to participate in the DL privilege. It must be deemed reliable by OEL. In evaluating the reliability of a party, OEL will consider all relevant information, including such factors as:

(i) Whether there is adverse information on the party's compliance with U.S.-export controls;

(ii) Whether the party both demonstrates the technical expertise and adopts the internal systems necessary to comply with the requirements of the Distribution License regulations; and

(iii) Whether the party commits the necessary resources to implement an adequate internal control program.

(2) *Applicant-consignee relationship.* The consignee of a Distribution License may be:

(i) A party that is controlled in fact by the license applicant. For purposes of Part 773, the term "controlled in fact" shall have the same meaning as contained in § 769.1(c) (1), (2) and (5); or

(ii) An unrelated party that has entered into a written agreement with the license applicant to adhere to all provisions of the Export Administration regulations, and related documentation applicable to an approved consignee; or

(iii) Any other party receiving commodities under the distribution license.

(3) *Activities of consignees.* Regardless of the relationship between license holder and consignee, approved consignees' activities will be divided into two basic categories for purposes of reporting and recordkeeping. Consignees may have activities that are included in either or both of these categories.

(i) *Resellers.* A reseller is a party who receives U.S. origin commodities for the purpose of resale to other parties. This category includes parties who resell commodities in the form in which received, parties who make modifications or add value (e.g., software or peripheral devices) before reselling or reexporting commodities that are primarily of U.S. origin, parties who attach a U.S. commodity in the same or essentially the same form as received to foreign equipment, and parties who supply U.S. commodities as support equipment to foreign products.

(ii) *End-users.* An end-user is a party who actually uses U.S. origin commodities permanently (e.g., as capital equipment), or incorporates them as integral parts, components, or materials in the production of primarily foreign origin commodities.

(4) *Prerequisite volume of business and consignee reliability.* (i) The exporter shall have a reasonable expectation that the Distribution License, if granted, will replace in the first year of operation under the procedure at least 25 individual validated export licenses that would otherwise be required.

(ii) The assessment of the reliability of a proposed foreign consignee shall take into account such factors as whether it—

(A) Has an ongoing business relationship with the applicant of at least one year;

(B) Is approved under another Distribution License;

(C) Has a satisfactory record established through Department of Commerce pre-license checks, or extensive experience as a consignee under individual validated licenses; or

(D) Is a controlled in fact affiliate of the applicant or of an approved foreign consignee.

(5) *Order requirement.* An applicant for a Distribution License need not hold an order, as defined in § 772.6(a)(1), from the proposed consignees for the commodities subject to this procedure at the time of applying for the license. Evidence of a consignee's firm intention to place orders on a continuing basis if approved under Distribution License may be required by OEL at the time of application submission from proposed consignees classifiable under paragraph (c)(2)(iii) of this section.

(d) *Application for Distribution License*—(1) *Prior consultation for new applicants.* The preparation of an initial application for a Distribution License requires a substantial amount of work by the proposed license holder. Since the prospective applicants will have to provide strong evidence of applicant and consignee reliability, and may not qualify for the privilege, a prospective applicant is required to consult with the Special Licensing Branch of the Office of Export Licensing before preparing and submitting an application.

(2) *Documents required.* Each application for a Distribution License shall include the documents listed in paragraph (d)(2) (i) through (iii) of this section prepared in accordance with the instruction set out in paragraph (d)(3) of this section:

(i) Form ITA-622P, Application for Export License.

(ii) Form ITA-6052P, Statement by Foreign Consignee in Support of Special License Application. This form must be submitted for each foreign consignee. If the consignee is a foreign government agency, as defined in § 775.2(b)(3), Form ITA-6052P is not required. The form must be accompanied by certain certifications by the consignee.

(iii) Comprehensive Narrative Statement by the Applicant.

(3) *Preparation of documents*—(i) *Form ITA-622P, Application for Export License.* The applicant shall prepare and submit the application in accordance with the provisions of § 772.4, except that the applicant shall follow the instructions furnished in Supplement No. 5 to Part 773. The ECCN, and subentry, if necessary, for each type of commodity that will be exported under the license must be listed, except that spare or replacement parts for listed commodities may be supplied under the Distribution License without specifying the CCL entries for such parts *if* shipments of such parts will not exceed 20% of the value of the total exports under the license.

(ii) *Form ITA-6052P, Statement by Foreign Consignee in Support of Special License Application.* Unless the consignee is a foreign-government agency, other than a government-controlled institution of higher learning university, academy, college, etc.), all consignees must sign Form ITA-6052P. Three originals (or single sheet copies printed back-to-back) of Form TA-6052P shall be manually signed y the consignee or by a responsible fficial of the consignee who is auhorized to bind the consignee to all of he items, undertakings, and commitents set forth on the Form. All pies shall be co-signed by the appliant and submitted with the applicaon to OEL. Each Form ITA-6052P all contain the following informaon or certifications on the form or on attachment to the form, as approiate.

A) *Certification of internal control ogram.* Each consignee shall certify, box 7 "Additional Information" on Form ITA-6052P or an attachnt, to the existence of an internal control program as described in paragraph (e)(2) of this section ensuring compliance with the Export Administration regulations.

(B) *Notice restricting reexport.* Each Form ITA-6052P shall include a certification that no commodities received under the license will be reexported unless the new country of destination has been approved by OEL and that the consignee agrees to the notice requirements described in paragraph (j) of this section.

(C) *Temporary exports.* Consignees who wish to exhibit or demonstrate commodities in countries other than those in which they are located or are authorized on the Form ITA-6052P may receive permission by providing the following additional certification on the Form ITA-6052P (and establishing internal controls applicable to such transactions):

> I (We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive goods under the Distribution License Procedure. The commodities exported will be retained under my (our) ownership and control, and will be returned to me (us) promptly after their exhibit or demonstration abroad, and in no case later than one year after the date of reexport, unless other disposition is authorized in writing by the Office of Export Licensing.

Those consignees who have already been approved on a valid Form ITA-6052P may submit the required certification separately on company letterhead for validation by the Office of Export Licensing.

(D) Each consignee must describe the scope of activities under the license in sufficient detail for OEL to determine whether the consignee is a reseller as described in paragraph (c)(3)(i) of this section, and end-user as described in paragraph (c)(3)(ii) of this section, or both. In the absence of sufficient detail for OEL to make this determination on otherwise acceptable applications, the consignee will be considered to be a reseller.

(E) Other certifications required of the consignee. Applicable certifications should be attached to the Form ITA-6052P.

(*1*) Each consignee must provide a certification that records required under paragraph (m) of this section will be made available upon request by the Department of Commerce.

(*2*) Consignees must certify that they will comply with the Export Administration Regulations, including the recordkeeping provisions of § 773.3(m) and applicable audit requirements of § 773.3(n).

(*3*) For sales and servicing involving South Africa, the appropriate certification(s) described below shall be entered in Item 7 of the Form ITA-6052P or furnished on consignees' letterhead.

(*i*) The following certification required by § 773.1 is to be completed by consignees approved under the Distribution License procedure and located in the Republic of South Africa, or by consignees outside the Republic of South Africa who are authorized to reexport or distribute commodities (other than computers and computer-related equipment) in the Republic of South Africa:

> I (We) certify that commodities received under this Distribution License will not be sold or otherwise made available, directly or indirectly, to or for use by or for police or military entities in the Republic of South Africa or used to service equipment owned, controlled or used by or for these entities.

(*ii*) The following certification required by § 773.1 is to be completed by all foreign consignees of Distribution Licenses who have been authorized to use U.S. origin parts in the manufacture of foreign origin end-products intended for export to the Republic of South Africa:

> I (We) certify that the commodities received under this Distribution License will not be used in the production of commodities that will be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa.

(*iii*) The following certification is to be completed by all consignees approved under the Distribution License procedure located in the Republic of South Africa or by consignees outside the Republic of South Africa who are authorized to reexport to or distribute computers or goods to service or manufacture computers in the Republic of South Africa:

> "I (We) certify that the commodities received under this license will not be sold or otherwise made available, directly or indirectly, to or for use by or for the following entities in the Republic of South Africa: police or military entities, any entity involved directly or indirectly in either a nuclear or sensitive nuclear end use, or any entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 785 of the Export Administration Regulations. These commodities are not to be used to service computers owned, controlled, or used by or for the entities indicated above, nor to manufacture computers intended for such entities."

NOTE: See §§ 773.3(a)(2) and 778.3 for definitions relating to nuclear end use.

(iii) *Comprehensive narrative statement.* A comprehensive narrative statement must be submitted by the applicant in support of the application. This statement shall describe the applicant's proposed utilization of the distribution license including:

(A) *Overview of proposed use of license.* Briefly describe the nature of business activity of the applicant firm, the sources of product proposed to be exported under the license, the estimated annual volume of exports under the license during its validity period, the primary activities of the various classes of proposed consignees (e.g., sales, manufacturing, assembly, warehousing/redistribution, etc.) and the anticipated nature and volume of regular and repetitive transactions, if any, proposed between consignees under the license. Specify if the distribution license is solely for distribution. Describe any proposed manufacturing, assembly and testing, servicing, or other activities. (Firms may provide in this statement a more specific description of products proposed for export; in some instances, such a description will improve license processing time.) Indicate whether the firm or any affiliated entity currently has any other special "bulk" licenses and give applicable numbers and expiration dates.

(B) *Consignee activity and relationship.* (*1*) New applicants or renewal applicants should indicate the dollar volume of sales or other transactions with each consignee in the commodities involved during the 12 month period or last calendar year before submission of the application. To maintain consignee eligibility, renewal applicants must demonstrate ongoing activity with each consignee under the license.

(*2*) Indicate the nature of the relationship with the Distribution License holder/applicant (i.e., controlled in fact, contract, independent reseller) and principal activity(ies) (i.e., reseller and/or end-user) of each proposed consignee. For each applicable consignee list the countries in the proposed reexport territories.

(C) *Certification of internal control program.* License holders and applicants must certify that there is in place or ready to be put in place upon approval of the application by OEL an internal control program that incorporates the elements set forth in paragraph (e)(1) of this section. The applicant should indicate whether any of the elements for an internal control program in paragraph (e)(1) of this section have not been implemented and explain why these elements were deemed inapplicable. Existence of a properly constructed internal control program will *not* relieve the license holder of liability for improper use of or failure to comply with the requirements of all applicable regulations pertaining to its Distribution License.

(D) *Authorized reexport territory.* If a proposed consignee will be reselling in countries other than the one in which the consignee is located, except countries listed in Supplement No. 2 or 8 to Part 773, either the applicant or the proposed consignee must provide a justification for reexporting to such countries. Each such consignee should have had at least six transactions with firms in each such country involving controlled commodities in the one year preceding submission of the application. When this level of prior activity does not exist, the justification should include a description of the marketing activity proposed or underway in each such country and the number of sales or transactions in controlled commodities anticipated during the validity period of the application. (For purposes of this section a "reexport territory" is defined as a list of specific destinations within Country Groups T and V, excluding Afghanistan, Iran and the People's Republic of China, in which the consignee has a history of sales or in which sales have been planned during the validity period of the license.) All applicants proposing to ship to consignees that will have reexport territories shall include in their internal control systems measures intended to ensure consignee compliance with the Distribution License procedure.

(E) Applicants having three or fewer proposed consignees generally will not qualify for a Distribution License. Such applicants must include a justification for participation in the procedure, including reasons why the individual validated license procedure is not practicable for their export purposes.

(e) *Internal control programs*—(1) *License holder or applicant.* Each license holder and applicant is required to have an internal control program designed to ensure compliance with all conditions of the Distribution License and the Export Administration Regulations. The nature of the control program will depend on the characteristics of the individual distribution license and the relationship between the license holder and the approved consignees. The applicant must certify to the existence of an internal control program that generally includes the following:

(i) Clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of distribution license compliance;

(ii) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the Distribution License procedure;

(iii) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (TDO) (Supplement No. 1 to Part 788), the list (where appropriate) of South African entities enforcing apartheid (Supplement No. 1 to Part 785), and other regulatory material necessary to ensure compliance;

(iv) A methodology for screening against the TDO orders/shipments to customers covering servicing, sales of commodities, software sales, and training;

(v) A system for assuring compliance with product and country restrictions, including controls over reexports by consignees and over direct shipments to consignees' customers;

(vi) An internal audit system or compliance review program for the applicant or license holder extending to all consignees;

(vii) A systen for assuring compliance with the limits on delivery to nuclear end-uses/end-users;

(viii) A continuing program for informing and educating those parties in the license holder or applicant firm and consignee firms in the applicable regulations, limits and restrictions of the Distribution License procedure;

(ix) A process for license holders, when the drop shipment privilege contained in paragraph (k) of this section is used, to screen and identify the relevant customers with a potential high risk for diversion that takes into consideration, but is not limited to, the following factors:

(A) Customer is small and little known (financial information unavailable from normal commercial sources and corporate principals unknown by trade sources).

(B) Customer does not wish to utilize commonly availalbe installation and maintenance services.

(C) Customer is reluctant to provide end-use/end-user information.

(D) Customer requests atypical payment terms or currencies.

(E) Order amounts, packaging, or delivery routing do not correspond with normal industry practice.

(F) Performance/design characteristics of commodity ordered incompatible with customer's line of business or stated end-use.

(G) Customer uses only "P.O. Box" address or has facilities that appear inappropriate for the commodity(ies) ordered.

(H) Customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).

(I) Customer is known to have, or is suspected of having, unauthorized dealings with parties and/or destinations in Country Groups Q, S, W, Y and Z and the PRC, Afghanistan and Iran.

When any of the above characteristics have been identified but through followup inquiries/investigation have not been satisfactorily resolved, the consignee should not transact any business with the customer before contacting the license holder. If the license holder is unable to resolve the problem, a request for assistance should be made in writing to contact the Special Licensing Branch, OEL, to explain the basis for the concern regarding the proposed customer and to determine if there is information available on the reliability of the customer. Foreign consignees and license holders should consider use of an individual validated license or reexport authorization before establishing an ongoing relationship with new customers under a Distribution License.

(x) A program for recordkeeping as required by the Export Administration Regulations.

(xi) An order processing system affixing responsibility for all required internal control reviews.

(xii) A system for monitoring intransit shipments and shipments to bonded warehouses and free trade zones.

(xiii) A system for notifying OEL promptly if the license holder has knowledge that a consignee is not in compliance with terms of the DL.

(2) *Consignees.* Each approved consignee under a distribution license program is required, on an attachment to the Form ITA-6052P, to certify to the existence of an internal control program that generally includes elements listed below:

(i) Statement of consignee policy communicated from consignee management to consignee employees, directing compliance with provisions of the Export Administration regulations pertaining to the distribution license procedure.

(ii) Maintenance of current list of employees charged with export compliance responsibilities.

(iii) System for screening hardware, software, training and servicing transactions against Table of Denial Orders and updates thereto supplied by the Distribution License holder.

(iv) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form ITA-6052P, and for exports of products incorporating commodities received under the Distribution License.

(v) System for complying with the nuclear restrictions under the procedure.

(vi) An internal audit program to verify consignee compliance with its internal control program.

(vii) Education program for employees processing transactions involving products received under the procedure.

(viii) Process for screening customers against the diversion risk profile described in paragraph (e)(1)(ix) of this section.

(ix) Recordkeeping and reporting systems required under § 773.3(h) and (m) of the EAR.

(x) Order processing system that documents employee clearance of transactions in accordance with applicable elements described above.

A consignee that has previously certified under a currently valid distribution license may, in lieu of certification, cite on the Form ITA-6052P the applicable license number and three digit consignee number of the valid Distribution License. Each consignee's internal control program is subject to audits by OEL.

(f) *Action on license applications*—(1) *Application review*. The Distribution License procedure authorizes multiple export transactions without review and approval of each individual transaction by OEL. Thus, before approving such a license, OEL must be fully satisfied that the persons benefiting from this special licensing procedure can be relied upon to adhere to the conditions of the license and the Export Administration Regulations, and that the approval of the application will not be detrimental to U.S. interests. To permit OEL to make such judgments, each application will be reviewed by OEL and the Office of Export Enforcement to establish the reliability of the parties to the license. An initial review may also entail an audit of past export transactions, inspection of documents, and interviews of firm officials in the United States and abroad. If OEL cannot verify that appropriate procedures are in place or establish the reliability of the proposed parties to the license, it may deny the application or modify it by eliminating parties from the application or by removing certain commodities or countries included in the application. However, failure to obtain approval to participate in this special licensing procedure does not preclude the filing of an application for an individual validated license or reexport authorization.

(2) *Application processing*. (i) Within 10 days of receipt in the Special Licensing Branch, OEL will acknowledge receipt and furnish a 6-digit identification number preceded by a single letter, for reference purposes.

(ii) Within 45 days of receipt in the Special Licensing Branch, OEL shall advise applicants of any correctable problems, deficiencies or clarifications before final processing.

(iii) Generally, applications that are complete in all material respects and do not require supplemental information from applicants will be processed within 90 days of receipt by OEL. Certain individual consignees may require more time for review.

(3) *Approved license applications*. When an application or a portion of an application for a Distribution License is approved, Form ITA-628, Export License, is issued by the Office of Export Licensing authorizing the export of commodities covered during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and provisions of the license.

(i) *Validation*. The license will be validated in the license number space with a stamp that includes a facsimile of the U.S. Department of Commerce seal, the letter "D", and a series of numbers to indicate the year, month, and day on which the license was validated. For an explanation of the coded dates shown on the license, see § 773.2(d)(1)(i).

(ii) *Validity period.* A new Distribution License will be valid for two years from the last day of the month in which it is issued and may be extended once by amendment for a two-year period. Thereafter, a new application must be submitted. If approved, it will be valid for four years.

(iii) *Case number.* The case number consists of a letter followed by six digits and is used for initial computerization of the application information, subsequent retrieval, and reference purposes.

(iv) *Distribution License number.* The Distribution License number will be indicated immediately below the validation stamp. This will be a four-digit number prefixed by the letter "V".

(v) *Special conditions.* OEL may impose special conditions on the use of a Distribution License that are more restrictive than the general conditions specified in the Export Administration Regulations. In such cases, the special conditions will be set forth on the license document, or riders thereto, or by subsequent communication from OEL. Special conditions may include, but are not limited to, specific commodity restrictions, deletion of countries from proposed reexport territories, and deletion of countries listed on consignee's Form ITA-6052P as proposed destinations of products incorporating commodities received under a Distribution License.

OEL may at any time prohibit the sale or transfer of commodities under the DL procedure to specified firms or individuals. (See § 773.3(1)(4)(ii) regarding specific notification procedures.) In such cases, the DL holder shall be required to inform all consignees. Individual validated licenses or reexport authorizations shall be required for subsequent transactions with such parties.

(4) *Applications returned without action.* When a Distribution License application is returned without action, the application, together with related documents, will be returned to the applicant with Form ITA-651, Advice on Application Returned Without Action (RWA). This form will state the reason for return of the license application and will explain the deficiencies or additional information required for OEL to reconsider the application. Resubmissions must be made within 120 days of RWA to be considered. Thereafter, a new application will be required.

(5) *Rejected applications.* When the Office of Export Licensing intends to reject an application for a Dsitribution License, it will notify the applicant in writing and give the reasons for the intended rejection in accordance with the provisions of § 770.13(j). The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the rejected Distribution License applications.

(g) *Action on Form ITA-6052P*—(1) *Approval.* Concurrently with the approval of a Distribution License application or approval of an amendment adding a consignee, two validated copies of each Form ITA-6052P will be sent to the license holder. One copy is to be retained by the license holder and one copy is to be sent by the exporter to the approved consignee.

(2) *Rejection.* If a consignee is not approved, the form will be returned to the U.S. exporter with a rider stating the reason for this action.

(3) *Notice to approved consignee.* The letter of transmittal of each approved Form ITA-6052P must be sent by the exporter to each approved consignee and must include (or have attached) the following:

(i) A description of recordkeeping requirements, applicable to the activities of the consignee;

(ii) Information to each consignee authorized to reexport on the approved Form ITA-6052P of reexport restrictions on any product received under the Distribution License;

(iii) A description of or copy of § 773.1(f) listing actions that may be taken for improper use of or failure to comply with the special licensing procedure;

(iv) A description of any special conditions or restrictions on the license applicable to the consignee, including the approved list of customers eligible to receive product listed in Supplement No. 4, if applicable;

(v) A description of elements of the license holder's internal control program relevant to the consignee, and a copy of the high risk customer profile contained in § 773.3(e)(1)(ix);

(vi) A copy of the Table of Denial Orders Currently in Effect and notification that the consignee will be receiving revisions from the license holder of this list of individuals and firms or other individuals or firms to whom the consignee may not sell or otherwise dispose of the U.S. commodities received under the Distribution License;

(vii) Special documentation requirements for consignees exporting or reexporting products to destinations having such requirements (see paragraph (h) of this section).

(viii) A notice to the consignee that, in addition to other requirements, it may not sell or otherwise dispose of any U.S. origin commodities when it knows or has reason to know the commodities will be diverted or reexported to unauthorized destinations or enduser, or will be used outside of the countries listed in Supplement No. 2 to Part 773 in designing, developing, or fabricating nuclear weapons or nuclear explosive devices; in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions; in the chemical processing of irradiated special nuclear or source material; in the production of heavy water; in the separation of isotopes of source and special nuclear material; or in the fabrication of nuclear reactor fuel containing plutonium. The consignee must also be advised that § 773.3(a)(2) prohibits the export or delivery of commodities to nuclear end-users or for nuclear enduses except in countries listed in either Supp. Nos. 2 or 3 to Part 773. A description of what constitutes a nuclear end-user or end-use must also be provided.

(ix) Clear notice to the consignee that the consignee is required to acknowledge, in writing, receipt of the letter of transmittal and certify that it will comply with all of the requirements, including establishment of an internal control program.

(h) *Special documentation for specific destinations*—(1)*Export by license holders.* A Swiss Blue Import Certificate or Yugoslav End-Use Certificate, as appropriate, covering distribution or use within Switzerland or Yugoslavia, must be obtained from the respective government and forwarded to the license holder before any export is made to these destinations. The license holder shall maintain records of all completed certificates and for partially used certificates maintain a record summarizing the partial shipments for each certificate. Records for partial shipments shall include the certificate number, the quantity and dates of any partial shipments, and the balance remaining unused. The Office of Export Licensing may requires submission of these documents upon notification. Records for this special documentation requirement shall be maintained by the license holder for a period of five years (see § 787.13(e)).

(2) *Reexports by consignees.* An approved consignee may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as applicable. The Swiss Blue Import Certificate need not be submitted to OEL but shall be retained by the consignee in accordance with the recordkeeping provisions described in paragraph (m)(1) of this section. The original of each Yugoslav End-Use Certificate issued, or a reproduced copy if the original is required by the government of the country in which the distributor is located, shall be forwarded quarterly by the distributor to the license holder.

(3) *Stocking in bond.* An approved consignee in Switzerland, without obtaining a Swiss Blue Import Certificate, may stock commodities in Switzerland for reexport as authorized by the Distribution License. However, such commodities may be released for distribution or use within Switzerland only after a Swiss Blue Import Certificate covering the transaction has been obtained and forwarded to the license holder. As shipments are made from bond into Switzerland, they shall be

reported to OEL through the license holder according to § 773.3(h)(1).

(i) *Export clearance*—(1) *Value of shipments.* There is no value limitation on shipments under a valid Distribution License. However, the value of each shipment must be shown on the Shipper's Export Declaration.

(2) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Distribution License shall be prepared in accordance with standard instructions. Although the Distribution License may describe the commodities in broad items, commodity descriptions on the Declaration shall be specific. The description shall:

(i) Conform to the applicable Commodity Control List description, and cite the Export Control Commodity Number in parentheses beneath the Schedule B number in Item 10;

(ii) Incorporate any additional information where required by Schedule B; (e.g., the type, size, or name of the specific commodity). In addition, the Declaration shall include in the lower portion of column 10 a licensing symbol consisting of the current Distribution License number followed by a blank space, and then a three-digit numerical designation identifying the licensee's approved consignee to whom the shipment is being made. These consignee numbers will be assigned by OEL to all the licensee's approved consignees in order to monitor exports.

(iii) Firms authorized to file summary SED reports to the U.S. Census Bureau may, on the request of OEL, be required to submit for OEL inspection copies of such reports applicable to exports under a Distribution License.

(3) *Mail shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 786.1(b).

(4) *Destination control statement.* The U.S. exporter shall enter one of the two following destination control statements, as appropriate, on the commercial invoice and bill of lading or air way-bill covering exports under the Distribution License procedure:

(i) These commodities licensed by the United States for ultimate destination (name of country where the distributor is located). Diversion contrary to U.S. law prohibited.

(ii) These commodities licensed by the United States for ultimate destination (name of country where the distributor is located) and for distribution or resale in (name(s) of country(ies) to which reexport has been authorized as indicated on approved Form ITA-6052P. Diversion contrary to U.S. law prohibited.

Use of the statement contained in paragraph (i)(4)(i) does not preclude the consignee from reexporting to any of the license holder's other approved consignees or to other countries for which specific prior approval has been received from OEL. In such instances, reexport is not contrary to U.S. law and, hence, is not prohibited.

(j) *Reexports and notice requirements.* Unless and approved consignee meets the conditions set forth in this § 773.3(j), no commodities received by an approved consignee under a Distribution License may be reexported without specific prior written approval from OEL. The written approval may be included on a validated Form ITA-6052P or a validated Form ITA-699P (see Part 774).

(1) *End user.* An end-user as described in § 773.3(c)(3)(ii) who is an approved consignee under a Distribution License may export manufactured products incorporating U.S. commodities received under a Distribution License to any destination he has listed on the Form ITA-6052P that has been approved by OEL. However, reexport of U.S. origin commodities in the form received is prohibited, unless specifically authorized in writing by the U.S. Government. An end-user who requests authorization to reexport U.S. origin spare parts to service manufactured products incorporating these parts will generally be granted permission if the end-user:

(i) Can establish that the volume of such parts shipments will be reasonable;

(ii) Agrees to maintain records; and

(iii) Agrees to permit OEL audits of such reexports.

(2) An approved consignee under a Distribution License (other than end-users classified under paragraph

(c)(3)(ii) of this section), may reexport commodities received under the Distribution License in accordance with the following rules:

(i) A consignee may reexport product in the form received to any destination included in the reexport territory listed on the Form ITA-6052P and approved by OEL, provided the country is an eligible country as defined in paragraph (a) of this section and the commodity is not excluded from shipment to that country by paragraph (b) of this section of the regulations or by special rider on the license.

(ii) An approved consignee, may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as provided in paragraph (h) of this section.

(iii) Temporary reexports. Approved consignees, may reexport temporarily to eligible countries defined in paragraph (a) of this section, whether or not included in an authorized reexport territory, for exhibit or demonstration, provided the consignee has complied with the assurance requirements in paragraph (d)(3)(ii)(C) of this section and is approved for such activity by OEL.

(3) *All consignees.* (i) An approved consignee reexport to any of the license holder's other consignees approved under the Distribution License procedure, except that commodities listed on Supplement No. 4 to Part 773 may be reexported only to parties who are approved by OEL as suitable end-users.

(ii) An approved consignee may reexport only eligible commodities and only to eligible countries. See § 773.3 (a) and (b) respectively for country and commodity limitations, as well as the footnotes in Supplement Nos. 1 and 4 to Part 773.

(iii) Unless specifically exempted on the license or subsequently in writing by OEL, all approved consignees reselling commodities received under the procedure must notify their customers on the commercial invoice (or by such other means specifically approved by OEL) of restrictions on unauthorized reexport. Except when made a special condition on a license, this notice will not be required when the shipment is to a consignee's customer in a country listed in Supplement No. 2 or 8 to this Part 773 or when the customer is either another approved consignee under the Distribution License or a foreign government agency, or when the customer is a retail customer. The notice shall read as follows:

> These commodities were authorized for export from the United States under a special Distribution License procedure on the condition that they may not be reexported without prior approval from United States authorities.

More specific wording referring to the Export Administration regulations or the need for OEL approval may be used at the option of the approved consignee. The notice may be translated into an appropriate language.

(4) *Request for specific reexport authorization.* A request for specific authorization for any reexport under a Distribution License not authorized by paragraph (j) (1), (2), (3) or (5) of this section, shall be submitted on Form ITA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, or by letter, to the Office of Export Licensing at the address in § 773.1(d). (See § 774.3.) Each request shall be supported by any document required for an individual reexport request under § 774.3(c).

(5) *Permissive reexports.* Approved consignees may take advantage of the permissive reexport provisions of § 774.2 provided that accurate records are maintained.

(k) *Direct shipments to consignee's customer.* A Distribution License consignee may request the license holder or another approved consignee under the same license to deliver a product directly to his/her customer in the requesting consignee's same country of destination or in another country authorized to receive exports under the requesting consignee's validated Form ITA-6052P. The license holder may make a direct shipment by entering on the Shipper's Export Declaration the name and address of the customer as ultimate consignee and adding the notation "by order of (name of consignee requesting the direct shipment and his/her address)". The notation shall appear below the commodity description and shall cite the Distribution License number followed by the three digit number of the consignee requesting the "by order of" shipment. An approved consignee may make a direct reexport shipment to a customer of another approved consignee by showing on his/her record of the shipment the name and address of the customer as ultimate consignee and adding the notation "by order of (name of consignee requesting the direct shipment and his/her address)." This procedure may not be used for commodities included in Supplement No. 4 to Part 773 unless specifically authorized in advance by OEL. License holders and consignees utilizing the direct shipment provision may invoice the shipments directly to the requesting consignee's customers if copies of applicable invoices are maintained by both the shipping party and requesting consignee. License holders and consignees utilizing direct shipments shall be required to have internal controls relative to such shipments.

(l) *Amendments of Distribution Licenses*—(1) *Form to use.* All requests for amendment shall be submitted on Form ITA-685P in the usual manner (see § 772.11).

(2) *Amendment processing.* (i) Within 30 days of receipt, OEL shall advise applicants of any correctable problems, deficiencies, or clarifications before final processing.

(ii) Generally, amendments complete in all material respects that do not require supplemental information will be processed within 60 days of receipt by OEL.

(3) *Extensions by amendment.* (i) A new Distribution License is valid for two years and may be extended for an additional two-year period by submitting Form ITA-685P, Request For and Notice of Amendment Action, supported by the Certification in paragraph (l)(3)(ii) of this section. Thereafter, two-year extensions will be unnecessary, but renewal applications must be submitted and, if approved, will provide a validity period of four years.

(ii) A request to extend the validity period of a Distribution License must be supported by the following certification:

> I (We) certify that all the facts and intentions set forth in our previously submitted application and comprehensive narrative statement remain the same except (enter the word "none" or specify the changes).

(iii) To requalify consignees, applicants for extensions must demonstrate ongoing activity with each consignee under the license.

(iv) License holders who are unable to submit a renewal application in a timely manner and need a temporary extension shall submit Form ITA-685P stating in Box 12 the reason why the temporary extention is needed.

(v) When to apply. An extension request must be submitted to OEL at least 90 days before the scheduled expiration date in order to avoid interruption of shipments under the license.

(vi) Action by OEL. OEL analyzes each extension request to determine whether an extension is justified under the eligibility criteria referred to in paragraph (c) of this section. OEL will validate and return the yellow copy of Form ITA-685P to the licensee for retention in its files. Licensees shall be required to inform all consignees of the new license expiration date, as appropriate.

(4) *Other amendments*—(i) *Addition of consignees.* If the exporter wishes to add a new consignee, he/she should file a Form ITA-6052P with Form ITA-685P, in accordance with § 772.11. If the new consignee is a foreign government agency, this fact must be entered in the "State Specifically the Way the License Should Read" space in the Form ITA-685P; but a Form ITA-6052P need not be submitted. Information secured by the license holder establishing the reliability of the new consignee should be included with the request to add a consignee.

(ii) *Deletion, suspension or revocation of consignees.* If a license holder discontinues its business relationship with a consignee before the expiration of the license, a Form ITA-685P deleting the consignee must be submitted immediately. The amendment request must indicate the reasons for termination and specify whether it involves noncompliance or perceived noncompliance with the regulations or the terms of the license. Whenever a license holder submits a Form ITA-685P deleting a consignee or whenever the licensee learns that the Office of Export Licensing has suspended or revoked the Distribution License consignee status of any of his Distribution License consignees, he must immediately notify all other consignees of the deletion, suspension or revocation. The notice must state that the deleted, suspended or revoked party is no longer eligible to receive goods or technical data under the licensee's Distribution License. It need not specify the reason for the suspension unless the consignee has been denied export privileges by the U.S. Department of Commerce.

(iii) *Change of name.* If the license holder changes the firm name, the change must be submitted on Form ITA-685P. The license holder must send a copy of the newly validated Form ITA-685P to all consignees and inform them to attach the copy to their validated Form ITA-6052P. If a consignee changes its name, the exporter should advise the Department of Commerce promptly and submit new Form ITA-6052P from the consignee.

(iv) *Change of address.* No amendment is necessary covering a change of address only. The exporter need only submit notification of the change on company letterhead to the Special Licensing Branch, Office of Export Licensing, Room 2087, P.O. Box 273, Washington, DC 20044. However, should a consignee move from one country to another, it will be necessary for the license holder to submit new Forms ITA-6052P from the new address, along with a Form ITA-685P.

(v) *Adding product by amendment.* A license holder must submit Form ITA-685P to request addition of commodities/products not covered by the commodity description on the approved application.

(vi) *Change in commodity classification.* When OEL announces a change in export controls that places a commodity formerly authorized for export by general license under validated license control, the license holder must submit Form ITA-685P in order to qualify the commodity for shipment under the Distribution License. If OEL revises the CCL, changing ECCNs for commodities already covered by the Distribution License, no action by the license holder is necessary until a renewal application is submitted.

(vii) *Addition of end-users for Supplement 4 commodities.* If the exporter wishes to add a new end-user for commodities listed in Supp. No. 4 to Part 773, he/she should file a Form ITA-685P, Request For and Notice of Amendment Action, in accordance with § 772.11. Included with this request to add end-users should be information secured by the license holder to establish the reliability of the new end-user.

(viii) *Other changes.* Changes other than cited above, such as a change in the ownership or control of the license holder or consignee firms, should be submitted on a letter describing the circumstances necessitating the change.

(m) *Records*—(1) *License holder and consignees*—(i) *Form ITA-6052P.* Validated Forms ITA-6052P and applicable attachments thereto shall be maintained at the site of the foreign consignee. The license holder shall maintain one copy of each validated Form ITA-6052P and each form not approved. Each form shall be maintained for a period of two years beyond its validity period.

(ii) *Transmittal letter to consignees.* A copy of the transmittal letter required under § 773.3 and any attachments thereto shall be maintained for a period of two years beyond the validity of Form ITA-6052P by both the license holder and the consignee.

(iii) *Form ITA-685P.* Validated copies of amendments shall be maintained by the license holder for a period of two years beyond the validity of the license.

(iv) *Export records.* All other forms, documents, correspondence, memoranda, specifications and other records, including invoices, shipping documents and orders relating to all exports from the United States under the Distribution License shall be kept by the license holder in accordance with the recordkeeping requirements of § 787.13. Other records that must be kept by the license holder under § 787.13 include records on special documentation for specific destinations (see § 773.3(h)), records relating to special conditions (see § 773.3(f)(3)(v)) on license applications, and other records and reports confirming compliance with the requirements of the regulations and the license.

(v) *Table of Denial Orders.* Copies of the Table of Denial Orders (TDO), and each updates thereto, shall be maintained by all parties during the validity period of the license or Form ITA-6052P, as appropriate. Copies of the consignee's confirmation of receipt of TDO and updates thereto must also be maintained.

(vi) *Internal control program.* Copies of manuals, guidelines, policy statements, internal audit procedures, and other documents making up the internal control program of each party included under a DL shall be maintained on a current basis.

(2) *Records of sales and exports or reexports by consignees.* Records are to be maintained on transactions regarding any commodity received under Distribution License that is sold in the form in which received; in a modified, but essentially the same form; as an attachment in essentially original form to foreign equipment; and as support equipment to foreign products. Records on such sales or reexports shall include the following:

(i) Full name and address of individual or firm to whom sale or reexport was made;

(ii) Full description of each commodity sold or reexported;

(iii) Units of quantity and value of each commodity sold or reexported; and

(iv) Date of sale or reexport.

(3) *Inspection of records.* (i) All of the records in paragraphs (m) (1) and (2) of this section shall be made available for inspection, upon request by OEL or by any other accredited representative of the U.S. Government, in accordance with § 787.13.

(ii) Foreign law may prohibit inspection of records by a U.S. Government representative in the foreign country where the records are located. In that event, the consignee must submit wi the required copies of Form IT 6052P an alternative arrangement f OEL to review consignee activities a determine whether or not the consig ee has complied with U.S. export co trol laws and regulations.

(iii) Records must be maintained that they are readily retrievable fo inspection by OEL.

(iv) Failure to comply with reques for inspection of records. Distributio License holders or foreign consignee who fail to comply with requests to in spect documents may be subject t orders denying export privileges (se § 787.8) or to the administrative a tions described in § 773.1(f).

(n) *Audits*—(1) *Post license audit* All license holders and consignees are subject to audits by OEL. Such audits will be conducted at the discretion of OEL. Generally OEL will give reasonable notice to license holders and consignees in advance of the conduct of such audits. The audits will generally involve interviews with officials familiar with or responsible for Distribution License compliance, inspection of records and the review of internal control programs. Special unannounced audits may be initiated if OEL has reason to believe a license holder or consignee has improperly used or has failed to comply with the Distribution License regulations and conditions. Alleged violations established during the course of audits will be referred to the Office of Export Enforcement.

(2) *Mini audits.* A consignee may be required on occasion to submit to OEL a listing of all sales under this license during specified previous months. Also, from time to time OEL may request from any consignee a listing of transactions during a specified, limited period involving direct shipments of commodities received under distribution license to customers of other consignees under § 773.3(k) and sales to customers in reexport territories authorized by OEL on the consignee's validated Form ITA-6052P.

(3) *Pre-license audits.* In addition to the requirement for pre-license consultation with OEL, new applicants may be required to cooperate in pre-license audits to establish the firm's credentials and reliability to participate in

the Distribution License procedure. Such may also include, but not be limited to, reviews of information collected to establish the credentials of proposed consignees.

(o) *Exceptions.* In the event that a licenseholder or cosignee is unable to meet any of the requirements of the Distribution License procedure but believes that unusual circumstances warrant a waiver or an exception of one or more of these requirements, the license holder, and only the license holder, may consult with or write to OEL explaining the circumstances in full and request in writing a waiver or exception. OEL will give special consideration to requests for exceptions by small exporters with sound internal control program, demonstrably reliable consignees, and the requisite volume of business activity.

[50 FR 21566, May 24, 1985; 50 FR 23666, June 5, 1985; 50 FR 37996, Sept. 19, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 773.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 47051, Nov. 9, 1990, § 773.3 (h)(1) was revised, effective February 7, 1991. For the convenience of the user, the superseded text follows:

§ 773.3 Distribution license.

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(h) *Special documentation for specific destinations*—(1) *Exports by license holders.* A Swiss Blue Import Certificate or Yugoslav End-Use Certificate, as appropriate, covering distribution or use within Switzerland or Yugoslavia, must be obtained from the respective government and forwarded to the license holder before any export is made to these destinations. As exports are completed under the Swiss Blue Import Certificates and Yugoslav End-Use Certificates, they must be reported quarterly to OEL by submitting all completed certificates or copies of partially used certificates with a cover sheet summarizing for each certificate the complete or partial shipment. These should be forwarded to the Office of Export Licensing, Special Licensing Branch, Room 1614, U.S. Department of Commerce, Washington, DC 20230, with the notation "Special Documentation" on the envelope. Thereafter, partial shipments must be reported as specified above to the Special Licensing Branch quarterly by letter, giving the certificate number, the quantities and dates of any such partial shipments made during the quarter and the balance remaining unused at the end of the quarter. This special documentation requirement is also subject to certain recordkeeping provisions of § 773.3(m)(1).

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§ 773.4 [Reserved]

§ 773.5 Humanitarian license procedure.

A Humanitarian License Procedure is established that authorizes exports to any destination of donated goods to meet basic human needs under a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(a) *Basic human needs.* Under this licensing procedure, basic human needs are defined as those requirements essential to individual well-being: Health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence. This procedure permits the export of goods that are suitable for small-scale local improvement projects; for example: Seeds, tools, fertilizers, small-scale irrigation pumps, and agricultural materials and machinery suited to small-scale farming operations. It encompasses the export of goods of the kind normally donated by charitable organizations that address basic human needs directly and at the local level, where specific improvement projects can be closely monitored and adjusted as needed to ensure that the donated items are being delivered to the intended beneficiaries. The Humanitarian License procedure does not, however, permit exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants.

(b) *Donations.* To qualify for export under this procedure, the goods must be provided free of charge to the beneficiary. This requirement reflects a distinction between freely-donated goods of a people-to-people nature of the type exported by U.S. private and voluntary charitable organizations and those goods of a commercial nature, which are excluded from this procedure. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this section.

(c) *Ineligible goods.* Among those goods *not* eligible under this procedure are those commodities controlled for national security, nuclear non-proliferation or crime control reasons in the "Reason for Control" paragraph on the Commodity Control List (CCL) (Supplement No. 1 to 799.1) and communications intercepting devices (ECCN 4517B). In addition, this procedure would not apply to any items controlled for export as hazardous goods or substances pursuant to section 3(13) of the Export Administration Act of 1979, as amended.

(d) *Eligible goods.* Supplement No. 7 to this Part 773 lists the kinds of items that have been determined to meet basic human needs. The exporter, however, is required to abide by the guidelines set forth in subsection (a) of this section to ensure that a given item to be exported is encompassed by this procedure. For example, even though "generators" are included in the Supplement, only small generators suitable and necessary to administer and operate a donative program are authorized for export under this procedure. In like manner, "laboratory supplies and equipment" covers items intended for use in local medical laboratories such as refrigerators, sterilization equipment and microscopes. If a license holder is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Office of Export Licensing, Special Licensing Division, Rm. 1614, U.S. Department of Commerce, Washington, DC 20230. The request should describe the type of goods intended for export and how it is intended to meet basic human needs. The Office of Export Licensing will notify the exporter whether the item is authorized for export under this procedure and any special conditions that may apply to such export.

(e) *Distribution.* To qualify for a Humanitarian License, the donor must demonstrate a means of ensuring that the donations exported are in fact used to meet the basic human needs of the intended beneficiaries. This requires a monitoring system that would alert the donor if goods are being diverted. See paragraph (f)(5) of this section for ways by which this requirement may be satisfied.

(f) *Application procedure.* To apply for a Humanitarian License, the applicant shall prepare a Narrative Statement, in duplicate, explaining the nature and function of the donative program. This Narrative Statement should be submitted to the Special Licensing Division, Office of Export Licensing, Room 1614, Department of Commerce, Washington, DC 20230. The Narrative Statement shall include, as a minimum, the following information:

(1) The applicant's identity and past experience as an exporter of goods to meet basic human needs;

(2) A specific list of past and current countries to which the donative programs have been and are being directed, as well as any countries to which such programs are now planned, with particular reference to donative programs in Country Groups S and Z;

(3) A description of the types of projects and commodities involved in the donative programs;

(4) A description of the specific class(es) of beneficiaries of particular donated goods intended to be exported under this license;

(5) A description of the arrangements to ensure proper distribution of the donated goods. These arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff;

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place; and

(6) Information concerning the source of funding for the donative pro-

grams and the projected annual value of exports under the license.

When a narrative statement is approved, the Office of Export Licensing will issue a validated letter authorizing export of eligible donations during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and conditions contained in the letter. Attached to this letter will be a validated copy of the narrative statement with a license number and an expiration date. This validated letter together with the validated copy of the Narrative Statement constitutes the "Humanitarian License." The license number must be displayed on the Shipper's Export Declaration (Commerce Form 7525-V).

(g) *Duration of License.* A Humanitarian License granted under this section will be valid for two years from the last day of the month in which it is issued. The license may be extended for two-year periods thereafter by submitting a certification to the Office of Export Licensing. This certification shall state the following:

> For the purpose of requesting a two year extension of Humanitarian License No. ——, I (we) certify that all material facts concerning the license outlined in the Narrative Statement submitted to the Office of Export Licensing remain the same and that I continue to comply with the terms and conditions of said license and with the Export Administration Regulations (EAR). I am authorized to make this statement on behalf of our organization.
>
> (Name and Title) ____________________
>
> (Signature and Date) ____________________

If any material facts concerning the license have changed from those described in the Narrative Statement, the exporter shall submit an explanation of those changes at the time that renewal of the license is sought. This request for an extension of the Humanitarian License should be submitted 90 days prior to the license's expiration date. When this extension request is approved, the Office of Export Licensing will issue a validated letter with a new license number and expiration date.

(h) *Revocation of License.* In addition to any enforcement action under Part 787 of the EAR, the license may be suspended or revoked if any of the following occurs:

(1) The exporter discontinues use of the license for a period of more than one year;

(2) The exporter has failed to comply with the guidelines of the license by exporting items that do not qualify as donations intended to meet basic human needs, including the acceptance of any form of payment for the items donated;

(3) The donations are diverted to an unauthorized party;

(4) Any provision of the Export Administration Act or any regulation, order, or license issued pursuant thereto has been violated.

(i) *Recordkeeping requirements.* In addition to the renewal request discussed in paragraph (g) of this section, any exporter granted a Humanitarian License shall maintain records of all shipments made under that license, the values of said shipments, the countries and beneficiaries to which the donations are sent, the validated Department of Commerce letter and Narrative Statement, and any party charged with distributing the donations to the beneficiaries. These records shall be available upon request by the Office of Export Enforcement for review.

(Approved by the Office of Management and Budget under control number 0625-0167)

[51 FR 8483, Mar. 12, 1986; 51 FR 9648, Mar. 20, 1986, as amended at 51 FR 24136, July 2, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 773.6 [Reserved]

§ 773.7 Service Supply Procedure.

A Service Supply (SL) Procedure is established to enable persons or firms in the United States or abroad to provide prompt service for equipment exported from the United States, produced abroad by a subsidiary, affiliate, or branch of a U.S. firm, or produced abroad by a manufacturer who uses parts imported from the United States in the manufactured product. The initial license or other authorization will be for a period of one year. This license or authorization may be extended for a period of up to two years.

If the activities for which the license or other authorization was issued continue to meet the Service Supply (SL) Procedure requirements after the three-year period, a complete new application shall be submitted. This license or other authorization may be valid for a period of up to two years, and may be extended for an additional period of up to two years.

(a) *Definitions and interpretations.* Terms used in this section (and in related forms) are defined or interpreted in paragraphs (a) (1) through (8) of this section:

(1) *Service and servicing.* The terms "service" and "servicing" refer to normal and usual activities to maintain equipment in proper, efficient, and safe operating condition, or to restore equipment to this condition;

(2) *Service facility.* The term "service facility" refers to a person or firm that has as its function, or as one of its functions, the servicing of equipment;

(3) *Equipment.* The term "equipment" includes, but is not restricted to, instruments, machines, aircraft, vehicles, and apparatus.

(4) *U.S. equipment.* The term "U.S. equipment" refers to equipment (i) exported from the United States, or (ii) manufactured or produced abroad by a U.S. subsidiary;

(5) *U.S. subsidiary.* The term "U.S. subsidiary" means a foreign-based subsidiary, affiliate, or branch of a U.S. person or firm under the full and active control of such U.S. person or firm;

(6) *Effective control.* The term "effective control" means the exercise of a right, under a contractual agreement between the U.S. exporter and the consignee, to determine and control the reexport of parts exported from the United States;

(7) *Replacement parts.* The term "replacement parts" means parts needed for the immediate repair of equipment, including replacement of defective parts. (It does not include test instruments or operating supplies.) Commodities that improve or change the basic design characteristics; e.g., as to accuracy, capability, or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts within the meaning the Service Supply (*SL*) Procedure;

(8) *Spare parts.* The term "spa parts" refers to parts in the kinds a quantities normally and customari kept on hand in the event they a needed to assure prompt repair equipment. (It includes "sub-assemblies," but does not include test instruments and operating supplies.) Commodities that improve or change th basic design characteristics, e.g., as t accuracy, capability, or productivity of the equipment upon which they ar installed, are not deemed to be spare parts within the meaning of the Service Supply (*SL*) Procedure.

(9) *Sub-assembly.* The term "sub-assembly" means a number of components assembled to perform a specific function or functions, replaceable as an entity, and not capable of operating by itself. One example would be printed circuit boards with components mounted thereon. This definition does not include major sub-systems such as those composed of a number of sub-assemblies, for example, the entire memory bank or the complete central processing section of a computer.

(b) *Commodities subject to procedure.* Any commodity for which a validated export license is required may be exported or reexported under the provisions of this paragraph except:

(1) Parts to service commodities that are located or for use outside of the countries listed in Supplement No. 2 to Part 773 and are related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium (see § 778.3);

(2) Parts to service arms, ammunition or implements of war referred to in Supplement No. 2 to Part 770;

(3) Parts to service commodities that are located or for use outside of the countries listed in Supplement No. 2 to Part 773 and are subject to the Nuclear Regulatory Commission licensing authority referred to in Supplement No. 3 to Part 770;

(4) Parts to service commodities[1] listed in Supplement No. 1 to this Part 773;

(5) The commodities controlled to limit the proliferation of missiles and described in those Export Control Commodity Numbers listed in § 776.18 of this subchapter;

(6) Commodities listed in Supplement No. 1 to this Part 773;

(7) Parts to service any equipment owned, controlled or used by or for a military or police entity in the Republic of South Africa; and

(8) Aircraft parts and accessories covered by §§ 790.6 and 790.7.

(c) *Destinations*—(1) *Country Groups S and Z, Iran and Syria.* No export or reexport may be made, directly or indirectly, under the provisions of § 773.7 to Country Group S or Z, Iran or Syria. Furthermore, no equipment owned or controlled by, or under lease or charter to, a country in Country Group S or Z, Iran or Syria or a national of any such country, may be serviced under the provisions of this SL procedure.

(2) *Country Groups Q, W, and Y, Afghanistan and Iran, and the People's Republic of China.* Export and reexport to Country Groups Q, W, and Y, Afghanistan and Iran, and the People's Republic of China may be made only in accordance with the provisions of paragraph (i) of this section. Except as provided in paragraph (i) of this section, no equipment owned or controlled by, or under lease or charter to, a country in Country Groups Q, W, and Y, Afghanistan and Iran, and the People's Republic of China or a national of such country may be serviced under the provisions of this *SL* procedure.

(d) *Types of Service Supply Authorizations.* Three types of export or reexport authorizations are obtainable under the provisions of this section.

(1) *Exports from the United States.* A U.S. person or firm may obtain a license, valid for twelve months, to export spare and replacement parts to consignees in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China for purposes of servicing U.S. equipment unless such consignees are listed in the U.S. Department of Commerce "Table of Denial Orders Currently in Effect" (see § 773.7(h)(3)). Under certain conditions, replacement parts (but not spare parts) may also be exported to Country Groups Q, W, and Y, and Afghanistan subject to the provisions set forth in § 773.7(i).

(i) *Qualification requirements.* To qualify for a Service Supply (*SL*) License authorizing exports from the United States, all of the following requirements must be met:

(A) The applicant must be either (*1*) the U.S. person or firm that manufactured or exported the equipment to be serviced abroad, or (*2*) the U.S. firm whose foreign subsidiary manufactured the equipment to be serviced;

(B) The supplying of spare and replacement parts must be a normal function of the applicant's business; and

(C) The export must be made for purposes of servicing U.S. equipment in the possession of the consignee.

(ii) *Applications.* The applicant shall submit the following documents, satisfactorily completed:

(A) [Reserved]

(B) Application for Export License, Form BXA-622P;

(C) Form ITA-6026P, Service Supply (*SL*) License Statement by U.S. Exporter;

(D) Comprehensive narrative statement by the exporter; and

(E) The certification required by § 773.1(a)(2)(i), if applicable.

(iii) *Documents waived.* An application for an *SL* License need not be supported by the Import Certificate or Consignee/Purchaser Statement otherwise required under § 775.1 or § 775.2. A Swiss Blue Import Certificate or a Yugoslav End-Use Certificate is required, when applicable. (See paragraph (e) of this section.)

(iv) *Preparation of documents.* The documents listed in paragraph (d)(1)(ii) of this section shall be prepared as follows:

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[1] Except that parts may be exported under the provisions of this § 773.7 to service vibration testing equipment identified in Supplement No. 1 to Part 773 under Export Control Commodity No. 1362 and all commodities identified in Supplement No. 1 to Part 773 under Export Control Commodity Nos. 1460 and 4460.

(A) [Reserved]

(B) *Form BXA-622P.* The applicant shall prepare and submit Form BXA-622P, Application for Export License, in accordance with the provisions of § 772.4(a)(4), with the following specific modifications:

(*1*) Insert "Service Supply License" in Item 4, "Special Purpose."

(*2*) Insert "Various—See attached List" in Item 7, "Country of Ultimate Destination."

(*3*) Attach a list in duplicate of the proposed countries of ultimate destination, in alphabetical order.

(*4*) An estimated one year's supply of spare and replacement parts shall be entered in Item 9(b), "Description of Commodity or Technical Data". All commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1) shall be either listed separately on the application or on an attachment, or, if feasible, described in related "A" product groups. Examples of acceptable "A" product groups are "Semiconductors, A type;" "Aircraft engines, A type;" etc.

(*5*) All commodities not identified by the code letter "A" having Export Control Commodity Numbers with the same Processing Code may be combined into a single entry. The commodity description for each such entry shall be in terms of broad descriptive categories corresponding with the Commodity Groups that appear on the Commodity Control List (see § 799.1(b)).

(*6*) The estimated total value of each commodity with the code letter "A" following the Export Control Commodity Number or related "A" product group, and of each "non-A" product group to be exported during the one-year validity period of the SL License shall be shown in the "Total Price" column of Item 9(d), and a grand total shall be computed for all of the commodities.

(*7*) The following statement shall be entered at the bottom of Item 9(b), "Description of Commodity or Technical Data":

> No commodity excluded from the SL Procedure under the Export Administration Regulations will be exported to any consignee in any destination under this SL Licens if this application is approved.

(*8*) Items 9(a), "Quantity", 9(c "Export Control Commodity Numbe and Processing Code," and the "Uni Price" column of Item 9(d) shall b left blank.

(C) *Form ITA-6026P.* Three copies of Form ITA-6026P shall be manually signed by the applicant or by a responsible official of the applicant who is authorized to bind the applicant to all of the terms, undertakings, and commitments set forth on the form.

(D) *Comprehensive narrative statement.* A comprehensive narrative statement shall be submitted by the applicant in support of his application for an *SL* License. This statement shall set forth the scope of the applicant's servicing activities pertinent to the application and shall include, for each entry listed on the application, the volume of exports for servicing made during the preceding year. If this volume has to be estimated, the basis upon which the estimate was compiled shall be explained.

NOTE: The preparation of an application for an *SL* License involves a substantial amount of work. Therefore, a prospective applicant may wish to consult the Office of Export Licensing to obtain a preliminary determination of the applicability of the SL Procedure to his transaction and as to any special information that may be required.

(2) *Reexport authorization by Foreign-based service facility*—(i) *Country Groups T and V, except Afghanistan, Iran, and the People's Republic of China.* A service facility located in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China may be authorized to use and to reexport spare and replacement parts to consignees in any other destination in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China to service U.S. equipment, unless such consignees are listed in the U.S. Department of Commerce "Table of Denial Orders Currently in Effect" (see § 773.7(h)(3)). Reexports of spare and replacement parts to, or their use in, the People's Republic of China are subject to provisions of § 773.7(d)(2)(ii)(C) and § 773.7(i). If the service facility is ap-

proved, reexports are authorized in accordance therewith regardless of any restrictions imposed on reexports under the terms of the other licensing procedures. The service facility may also be authorized to service U.S. equipment in the country where the facility is located and return the serviced equipment to the country from which it was sent within Country Group T or V, except Afghanistan, Iran, and the People's Republic of China. In addition, a service facility may be authorized to reexport to any of its U.S. exporter's other service facilities approved under the Service Supply procedure.

(ii) *Country Groups Q, W, and Y, Afghanistan and the People's Republic of China.* A service facility located in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China that is under the effective control of the U.S. exporter may be authorized to reexport, upon specific instructions of the U.S. exporter, replacement parts for immediate repair of U.S. equipment in Country Group Q, W or Y, Afghanistan or the People's Republic of China subject to the provisions of § 773.7(i). The service facility may also be authorized to service U.S. equipment in the country where the facility is located and return the serviced equipment to the country from which it was sent, subject to the following conditions:

(A) The service facility must have no knowledge or reason to believe that the equipment to be serviced was exported or reexported to a destination in Country Group Q, W or Y, Afghanistan or the People's Republic of China without the authorization of the U.S. Government;

(B) The equipment to be serviced must have been originally exported from the United States or obtained from a U.S. subsidiary;

(C) The servicing shall not improve the basic characteristics, *e.g.*, as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport to the consignee in Country Group Q, W or Y, Afghanistan or the People's Republic of China that is requesting the servicing; and

(D) The recordkeeping and reporting requirements of paragraphs (j) and (k) of this section shall be complied with.

(iii) *Qualification requirements.* To qualify to receive reexport or servicing authorization under the SL Procedure, a foreign person or firm must have been designated as a service facility by the U.S. manufacturer or by the U.S. exporter of the U.S. equipment to be serviced, and servicing such equipment must be a normal function of the designated facility.

(iv) *Application.* The service facility shall submit an application to the Office of Export Licensing at the address in § 773.1(d). The application must include a letter requesting authorization to use and reexport spare and replacement parts under the *SL* Procedure , three completed copies of Form ITA-6052, Statement by Foreign Consignee in Support of Special License Application, and a comprehensive narrative statement by the operator of the service facility. The statement must include:

(A) Identity of the U.S. manufacturer(s) or U.S. exporter(s) that has (have) designated the facility to be its service facility;

(B) Expiration date of the designation in (A) above;

(C) Whether the service facility is under the effective control of the U.S. person or firm;

(D) Detailed description of the services performed by the service facility, as indicated on Form ITA-6052.

(3) *Reexports by foreign manufacturer.* A manufacturer located in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China who incorporates U.S.-origin parts into a product may be authorized to reexport to consignees in County Group T or V, except Afghanistan, Iran, and the People's Republic of China such U.S.-origin parts as spare or replacement parts for servicing the manufactured products in the consignee's possession, unless such consignees are listed in the U.S. Department of Commerce "Table of Denial Orders Currently in Effect" (see § 773.7(h)(3)).

(i) *Qualification requirements.* To qualify to receive reexport authorization under the *SL* Procedure, a foreign manufacturer must use parts exported from the United States in the manufactured equipment to be serviced, and the parts to be reexported for purposes of servicing such equipment must be of the same type as the components they are to replace.

(ii) *Application.* Each application for reexport by a foreign manufacturer shall include the documents specified in (*a*) and (*b*) below, and, if applicable, the certification required by § 773.1(a)(2)(i):

(A) A letter from the manufacturer requesting permission to reexport under the Service Supply License Procedure parts imported from the United States to replace such parts incorporated into a product manufactured by the applicant;

(B) Form ITA-6052, identifying the manufactured products containing parts exported from the United States and the countries to which these products are exported.

(e) *Exports and reexports to Switzerland or Yugoslavia.* For an export or reexport of spare and replacement parts to service equipment located in Switzerland or Yugoslavia, the U.S. exporter or his approved service facility, or the authorized foreign manufacturer, must obtain for each transaction a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate showing the United States as the country of origin of the parts to be shipped. Exporters shall maintain these records for a period of five years (see § 787.13(e)). Approved foreign service facilities shall forward, on a quarterly basis, the originals of these documents (or reproduce copies if the originals are required by the government of the country in which the Form ITA-6052P holder is located) directly to the U.S. exporter. A letter of transmittal showing the SL License number of the approved Form ITA-6052P shall accompany the documents. Authorized foreign manufacturers are required to maintain appropriate records. The Office of Export Licensing may requires the exporter or foreign manufacturer to submit these documents upon notification.

(f) ***Action by Office of Export Licensing on License Applications*—(1) *Approved license applications.*** When an application for an *SL* License is approved, Form DIB-628, Export License, will be issued authorizing, subject to the provisions of the Export Administration Regulations and to the terms and provisions of the license the export of commodities covered during a validity period of one year. An approved copy of Form ITA-602 will also be issued to the exporter. The *SL* License will be similar to a validated license described in § 772.9 with the following exceptions:

(i) *Validation.* The license will be validated in the license number space with a stamp which includes a facsimile of the U.S. Department of Commerce seal, the letter "D", and a series of numbers to indicate the year, month, and day on which the license was validated. An explanation of the coded dates shown on the license is set forth in § 773.2(d)(1)(i).

(ii) *Case Number.* The case number consists of the letter "A" followed by six digits, and is used for initial computerization of the application, and subsequent retrieval.

(iii) *Service Supply License Number.* Immediately below the validation stamp, the *SL* License number assigned to the license will be indicated. This license number will be a four-digit number prefixed by the letter "S."

(iv) *Special conditions.* Special conditions or restrictions may be imposed on the use of an *SL* License in addition to the general conditions or restrictions set forth in the Export Administration Regulations. These conditions or restrictions will be set forth on the license document at the time of issuance, or a separate written notification of these conditions or restrictions will be given to the licensee.

(2) *Applications returned without action.* When an *SL* License application is returned without action by the Office of Export Licensing, the application, together with related documents, will be returned to the applicant with Form DIB-651, Advice on Application Returned Without Action. This form will state the reason(s) for return of the license application and will explain the corrections and additional information required if the application is to be resubmitted to the

Office of Export Licensing for further consideration.

(3) *Rejected applications.* When the Office of Export Licensing intends to reject an application for an SL License, it will notify the applicant in writing and give the reasons for the intended rejection in accordance with the provisions of § 770.13(j). The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the rejected SL License application.

(g) *Export clearance*—(1) *License or other approval action.* The license or amendment is not required to be filed with the customs office or postmaster. When exporting by mail, the *SL* License number shall be entered on the address side of the wrapper on the package. Exports by mail shall be made in accordance with the provisions of § 786.1(b).

(2) *Limitation on amount shipped.* Exports under an *SL* License of any commodity or commodity group identified thereon by the code letter "A" are limited for each such entry, during the entire validity period of the license, to the amount shown on the license for that entry. However, exports of an entry not identified by the code letter "A" may exceed the amount shown for that particular entry provided the total amount of all such shipments does not exceed the grand total of the amounts authorized for all of the commodities not identified by the code letter "A" shown on the license.

(3) *Notice to ultimate consignee.* The following notice shall be entered on the commercial invoice covering each shipment under the *SL* License:

These commodities are sent for the authorized repair purposes only and may not be used for any other purpose.

(4) *Shipper's Export Declaration.* As set forth in the standard instructions for preparing Shipper's Export Declarations, the validated license number must be shown on the Declaration. In the case of an *SL* License, the license number is prefixed by the letter "S". (See paragraph (f)(1)(ii) of this section.)

NOTE: Although the *SL* License describes the commodities in broad descriptive terms, commodity descriptions on the Declaration shall be specific. The description of a commodity shall (1) conform to the applicable Commodity Control List description, and (2) incorporate any additional information where required by Schedule B; for example, the type, size, or name of the specific commodity.

(h) *Action by Office of Export Licensing on reexports*—(1) *Reexports by foreign-based service facility.* If the Office of Export Licensing approves the request of a foreign-based service facility for authorization to reexport parts imported from the United States under the *SL* Procedure, a validated copy of Form ITA-6052 will be sent to the service facility, via the U.S. Foreign Service. This shall be retained by the service facility as evidence of its authority to reexport spare or replacement parts imported from the United States. However, this authority shall in no way relieve the service facility from its responsibilities to comply with the laws, rules, and regulations of the countries from which the parts are to be reexported, or of any other country having authority over any phase of the transaction. If the service facility's Form ITA-6052 was submitted to the Office of Export Licensing through its U.S. parent firm, the validated copy will be sent through the U.S. parent firm, with an extra copy for retention by the U.S. parent firm. The copy of the validated Form ITA-6052 will bear a Facility Number on the bottom right corner of the form. When ordering spare or replacement parts from the United States under the individual validated license procedure, the service facility shall cite this Form ITA-6052 Facility Number instead of submitting the documentation otherwise required to support of a license application (such as an import certificate or a consignee/purchaser statement). Normally, the Office of Export Licensing will accept this number instead of documents otherwise required. Unless specifically restricted, an approved Form ITA-6052 authorizes the named service facility to:

(i) Service the types of equipment indicated on the Form ITA-6052 in the country where the facility is located and return the serviced equipment to the country from which it was sent within Country Group T or V except Afghanistan;[2] and

(ii) Reexport parts imported from the United States to consignees in Country Group T or V, except Afghanistan, Iran, and the People's Republic of China for the purpose of servicing U.S.-origin equipment in the possession of the consignee. If the service facility is under the effective control of the U.S. exporter, it may, upon specific instructions of the exporter, reexport replacement (but not spare) parts to a consignee in Country Group Q, W, or Y, Afghanistan or the People's Republic of China subject to the special provisions set forth in paragraph (i).[3] The reexport authorizations described in this paragraph normally will apply to commodities imported under the provisions of any type of U.S. export license. Except when specifically limited by the Office of Export Licensing, reexports under an approved Form ITA-6052 are authorized regardless of any restrictions imposed under the terms of any other licensing procedure. In all cases, reasonable care and diligence must be exercised to prevent shipments of kinds and quantities of parts in excess of that not needed for the authorized service.

(2) *Reexports by foreign manufacturer.* If the Office of Export Licensing approves the request of a foreign manufacturer for authorization to reexport U.S. spare or replacement parts, a validated copy of Form ITA-6052 will be sent to the manufacturer, via the U.S. Foreign Service. This shall be retained by him as evidence of his authority to reexport the spare or replacement parts to the countries listed in the form ITA-6052. However, this authority shall in no way relieve the manufacturer from its responsibilities to comply with the laws, rules, and
regulations of the country from wi
the commodity is to be reexported
of any other country having autho
over any phase of the transact
This reexport authorization norm
will apply to commodities impo
under the provisions of any type
U.S. export license. Except when
cifically limited by the Office
Export Licensing, reexports under
approved Form ITA-6052 are auth
ized regardless of any restrictions
posed under the terms of other lice
ing procedures. In all cases, reasona
care and diligence must be exercised
prevent shipments of kinds and qu
tities of parts not needed for the
thorized service.

(3) *Table of Denial Orders.* A U
parent firm shall furnish its forei
based service facility(ies) or forei
manufacturer(s) with current repri
of the "Table of Denial Orders C
rently in Effect"[4] when the validat
Form ITA-6052 is forwarded. There
ter, each addendum to the Table sh
also be furnished promptly to ea
foreign-based facility or manufacture
If the foreign-based service facility
manufacturer is not a U.S. subsidiar
the current Table will be sent with th
validated Form ITA-6052 by th
Office of Export Licensing. Therea
ter, it will be the responsibility of th
facility or manufacturer to obtai
each addendum to the Table, either b
subscription to the Export Administra
tion Regulations, by written request to
the Office of Export Licensing, or by
other suitable arrangements.

(i) *Special provisions for Country Groups Q, W, and Y, Afghanistan and the People's Republic of China.* An export or reexport may be made to Country Group Q, W or Y, Afghanistan or the People's Republic of China under the provisions of this section only if the following conditions and restrictions are complied with:

(1) *Replacement parts only.* The U.S. exporter or a foreign service facility under the U.S. exporter's effective control may export or reexport only replacement parts to a consignee in

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[2] If the service facility is under the effective control of the U.S. exporter, it may also return the serviced equipment to Country Groups Q, W, and Y and Afghanistan.

[3] Further authorization from the U.S. Treasury Department is not required for reexports to Country Group Q, W, or Y authorized by the Office of Export Licensing under the *SL* Procedure.

[4] This table, in Part 788, lists names of all persons or firms currently denied export privileges.

Country Group Q, W, or Y or Afghanistan. Spare parts, as defined in paragraph (a)(8), may not be exported or reexported to these destinations under the *SL* Procedure.

(2) *Servicing restricted to authorized exports or reexports.* The U.S. exporter or the reexporting service facility must have no knowledge or reason to believe that the equipment to be serviced was exported or reexported to a destination in Country Group Q, W or Y, Afghanistan or the People's Republic of China without the authorization of the U.S. Government.

(3) *Servicing of U.S. equipment only.* The shipment must be for the purpose of servicing equipment originally exported from the United States or obtained from a U.S. subsidiary. Further, the shipment may be made in a total quantity no greater, and a quality no better, than that necessary for this purpose.

(4) *Restriction on parts to be exported.* Parts identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List may not be exported or reexported under this procedure to Country Groups Q, W or Y, or to Afghanistan if the value of the parts included in a shipment is more than $25,000 or if the parts are listed in paragraph (b) of this section. Parts identified by an "A" may not be exported or reexported to the People's Republic of China if the value of the parts included in a shipment is more than $75,000 or if the parts are listed in paragraph (b) of this section.

(5) [Reserved]

(6) *Records and reports.* Special recordkeeping and reporting requirements for exports and reexports to Country Groups Q, W, and Y, Afghanistan and the People's Republic of China must be observed. (See paragraphs (j) and (k) of this section.)

(j) *Records*—(1) *U.S. exporter.* A U.S. exporter shall prepare records of all exports made under the Service Supply (*SL*) Procedure containing, as a minimum, the information required by paragraph (k) of this section. Such records shall be retained for a period of two years.

(2) *Foreign-based service facility or foreign manufacturer.* A foreign-based service facility or a foreign manufacturer shall prepare, and retain for a period of two years, records of all commodities received under the provisions of the Service Supply (*SL*) Procedure, as well as all such commodities it has used or supplied domestically or reexported. All such records shall be made available to U.S. Government officials for inspection, upon request, in accordance with the provisions of § 787.13. As a minimum these records shall show:

(i) The Form ITA-6052 approval number and the full name and address of the individual or firm that supplied the parts, as well as the individual or firm that received, used, or reexported the parts;

(ii) A description of the equipment on which the parts were used or for which they were intended;

(iii) A description of the parts, including quantity and value; and

(iv) The date the parts were received, used, supplied, or reexported.

In the event that a foreign governmental regulation or statute prohibits a U.S. Government representative from inspecting these records in the foreign country, the Office of Export Licensing may, in substitution, require the submission of specified records, documents, or both.

(k) *Reports.* Each exporter who has been issued an SL License under the provisions of § 773.7(f)(1) shall prepare, on a yearly basis, a report on all exports made during the preceding year under the SL License (OMB Approval No. 0694-0002). The Office of Export Licensing may require submission of documents upon notification. The report shall cite the license number indicated on the export license and shall show, as a minimum for each consignee, a separate aggregate value for each product group shown on his license (i.e., for each commodity identified by the code letter "A" following the Export Control Commodity Number or related "A" product group). Where exports are made to service vessels or aircraft, both the country of registry and the country to which the shipment was made shall be listed. Yugoslav End-Use Certificates and Swiss Blue Import Certificates covering exports to these destinations shall be submitted as attachments to the report. If exports of commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List have been made to Country Group Q, W, or Y, Afghanistan or the People's Republic of China under the SL Procedure, the quarterly report shall show each of these shipments separately, the date of each shipment, and shall include the following additional information for each such commodity—

(1) A description of the equipment serviced in Commodity Control List terms;

(2) The quantity or number and the value of such items or equipment serviced; and

(3) The country is which the equipment was serviced.

If the U.S. exporter has authorized his approved foreign-based service facility to reexport such commodities identified by the code letter "A" following the Export Control Commodity Number to Country Group Q, W, or Y, Afghanistan or the People's Republic of China or to service such equipment at its facility and to return the serviced equipment to the destination from which it was received for servicing, a similar quarterly report shall be submitted in the same detail set forth above. In addition, the Office of Export Licensing may require additional reports regarding any aspects of exports or reexports under the provisions of this section. Submit reports (original only) to the Office of Export Licensing at the address in § 773.1(d).

(l) *Exceptions*. In the event that a U.S. exporter is unable to meet any of the requirements of this *SL* Procedure, but believes that unusual circumstances warrant a waiver or an exception to one or more of these requirements, he may consult or write to the Office of Export Licensing, explaining the circumstances in full and requesting a waiver or exception.

(m) *Extensions and amendments of Service Supply Licenses and Reexport Authorizations*—(1) *Extensions*—(i) *Form to use*. Requests to extend the validity period of an existing Service Supply License shall be submitted on Form DIB-685P. Request for and Notice of Amendment Action, supp ed by the following certification:

I (We) certify that all the facts and i tions set forth in our previously subm comprehensive narrative statement re the same, except (enter the word "none specify the changes.)

The extended validity period will b two-year duration unless a one-y period is specifically requested. those service facilities that are de nated by U.S. exporters, extension the validity period for two years m also be requested on Form DIB-6 with the appropriate certification tached, as cited above. Foreign ma facturers approved as a service faci may furnish a letter requesting two-year extension in lieu of F DIB-685P with appropriate certifi tion attached. In the years when t exporter is not entitled to file the quest for extension by amendment, complete new application must be s mitted in accordance with the pro sions of paragraph (d)(1)(ii) of t section.

(ii) *When to apply*. An extension quest should be submitted to t Office of Export Licensing from 6 90 days before the expiration date order to avoid interruption of sh ments under the license.

(2) *Amendments*—(i) *Form to use*. requests for amendments shall be s mitted on Form DIB-685P in the us manner (see § 772.11), including th requests to extend the validity per (see paragraph (m)(1)(i) of this s tion).

(ii) *When to apply*. A person or fi desiring to increase the amount a thorized for export under the *SL* Pr cedure may do so at any time dur the validity period of the license.

(iii) *Action by Office of Export L censing*. Each extension reques analyzed by the Office of Export L censing as to the past license activ to determine whether an extension justified. Prior to asking for an exte sion the licensee should examine h own records to see if the criteria d scribed in § 773.7(d)(1)(i) were m during the initial validity of the l cense. If not, the licensee should app for an individual or other appropria type of license instead of an extensi of the Service Supply License. When action has been taken by the Office of Export Licensing, this form will be returned to the licensee for retention in his files.

(n) *Effect of other provisions.* Insofar as consistent with the provisions of this section, all of the provisions of the Export Administration Regulations shall apply equally to licenses and reexport authorizations issued under this section and to applications for licenses and requests for reexport authorization.

(Approved by the Office of Management and Budget under control number 0625-0041)

[44 FR 1095, Jan. 4, 1979. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 773.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 47051, Nov. 9, 1990, § 773.7(e) and the first sentence of the introductory text of (k) was revised, effective February 7, 1991. For the convenience of the user, the superseded text follows:

§ 773.7 Service Supply Procedure.

* * * * *

(e) *Exports and Reexports to Switzerland or Yugoslavia.* For an export or reexport of spare and replacement parts to service equipment located in Switzerland or Yugoslavia, the U.S. exporter or his approved service facility, or the authorized foreign manufacturer, must obtain for each transaction a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate showing the United States as the country of origin of the parts to be shipped. Exporters shall forward these documents to the Office of Export Licensing in accordance with the provisions of § 773.7(k) of this section. Approved Form ITA-6052 holders (*i.e.*, foreign service facilities and manufacturers) shall forward, on a monthly basis, the originals of these documents (or reproduced copies if the originals are required by the government of the country in which the Form ITA-6052 holder is located) directly to the Office of Export Licensing at the address in § 773.1(d). A letter of transmittal showing the SL License number of the approved Form ITA-6052 shall accompany the documents.

* * * * *

(k) *Reports.* Each exporter who has been issued an SL License under the provisions of paragraph (f)(1) of this section shall prepare and submit, on a quarterly basis, a report on all exports made during the preceding quarter under the SL License (OMB approval no. 0625-0041). * * *

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§ 773.8 Aircraft and Vessel Repair Station Procedure.

An Aircraft and Vessel Repair Station Procedure is established as an alternative procedure to the filing of supporting documents with applications to export aircraft or vessel repair parts to certain destinations.

(a) *Definitions*—(1) *Station Number.* As used in this section, a "Station Number" is a number assigned by the Office of Export Licensing on Form FC-43, Statement by Foreign Importer of Aircraft or Vessel Repair Parts (see Supplement S-8 for facsimile of form), to an approved foreign importer of such parts.

(2) *Foreign importer.* As used in this section, a "Foreign Importer" is a person or firm located in any foreign country except Country Group Q, S, W, Y, or Z, or Afghanistan, Iran or Syria, that is either:

(i) Engaged in the repair, maintenance, or servicing of aircraft or vessels, either exclusively or as part of a related business; or

(ii) Engaged in supplying U.S.-origin parts, accessories, equipment or components, either exclusively or as parts of a related business, directly to aircraft or vessels for use thereon. Such foreign person or firm need not maintain an aircraft repair hangar or ship repair yard.

(b) *Eligibility*—(1) *Eligible foreign businesses.* The types of foreign businesses that may be eligible to use the Aircraft and Vessel Repair Station Procedure include, but are not limited to, the following:

(i) Repair of aircraft or vessels, for which repair U.S.-origin parts are used;

(ii) Repair of aircraft or vessels, using U.S.-origin parts and also sale of such parts directly to aircraft or vessels as spares or standby equipment; or

(iii) Sale of U.S.-origin parts directly to the owner or operator of an aircraft or vessel, as spares or replacement equipment, but not the repair of such civil aircraft or vessels;

(iv) Sale and installation of equipment or components normally required for the safe operation of vessel or aircraft (e.g., radar, radio, instruments, etc.); or

(v) Repair (including exchange) of components for aircraft or vessels (e.g., engines, radar, etc.) that the importer will reinstall on the aircraft or vessel or return to the owner or operator (or any person or facility authorized to act on behalf of the owner or operator) for reinstallation on the aircraft or vessel.

(2) *Noneligible foreign businesses.* The following types of foreign businesses are not eligible to use the Aircraft and Vessel Repair Station Procedure:

(i) A foreign importer who imports U.S.-origin parts for general resale (including resale to repairmen), or for reexport in the form received; or

(ii) A foreign importer whose normal business is the repair of components for aircraft or vessels; e.g., engines, radar, etc., unless he installs them on or returns them to the aircraft or vessels for use thereon.

(3) *Importers engaged in both eligible and noneligible businesses.* In some instances a foreign importer may be engaged in several types of businesses, but not all of them will be eligible to use the Aircraft and Vessel Repair Station Procedure. For example, the importer may be engaged in repairing aircraft or vessels, as well as in selling commodities to other repairmen or in reexporting the commodities to other countries. These several types of businesses do not preclude him from eligibility under this procedure with respect to U.S.-origin commodities used by him in the repair, maintenance or servicing of aircraft or vessels. However, for commodities which the importer purchases in the United States for end-uses not authorized under this procedure, both the importer and the exporter must meet the standard documentation and reexport provisions of the Export Control regulations.

(c) *Authorizations and limitation aircraft and vessel repair station p cedure.* (1) Restricted to certain craft and vessels. A foreign importe authorized to use U.S.-origin parts the repair, maintenance, or servic of any civil aircraft or vessel, provid the aircraft or vessel is not register in, or not owned or controlled by, not chartered or leased to, a Group S, W, Y, or Z country, Afghanistan Libya, or any national thereof. If t aircraft or vessel is registered in, owned or controlled by, or charter or leased to the People's Republic China or a national thereof, the su porting documentation must inclu the location of the service to be pe formed and the type of aircraft vessel to be serviced.

(2) Unless otherwise authorized b the Export Administration Regulations, a foreign importer may not reexport U.S.-origin commodities in the form received or dispose of them i any other manner without the prior approval of the Office of Export Licensing. The permissive reexport provisions of § 774.2 of the Export Administration Regulations in this subchapter relating to reexports of commodities within allowable GLV dollar limits are not applicable to commodities exported under this Aircraft and Vessel Repair Station Procedure.

(d) *How to obtain a repair station number*—(1) *Documentation.* The documentation provisions of the Expor Administration Regulations require that, under specified circumstances, a foreign importer must send his U.S. exporter an Import Certificate, a consignee/purchaser statement, a Swis Blue Import Certificate, or a Yugosla End-Use Certificate to support an application for export license or a reexport request. Additionally, before U.S.-origin parts, accessories, equipment, or components may be used abroad in the repair, maintenance or servicing of aircraft or vessels, authorization must be obtained from the Office of Export Licensing, either on the validated license or by other type of authorization. As an alternative to these requirements, a foreign importer may submit instead Form ITA-686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, to the Office of Export Licensing in accordance with the procedure described below. Copies of Form ITA-686 are available from the Office of Export Licensing, at the address in § 773.1(d), from all of the Department's District Offices, and from U.S. diplomatic and consular offices.

(2) *Submission of Form ITA-686P by foreign importer.* To apply for qualification to operate under the Aircraft and Vessel Repair Station Procedure, the foreign importer shall submit the original and two copies of Form ITA-686P to the Office of Export Licensing. All items on the form must be completed including the signature of an official of the foreign firm attesting to agreement to the terms and conditions of the form.

(3) *Office of Export Licensing action on Form FC-43.* If the Office of Export Licensing approves a Form FC-43, a validated copy is sent to the foreign importer. If the request is not approved, the importer is so advised. The validated Form FC-43 will contain a Station Number and an expiration date. (The expiration date generally is June 30 of the year following the date on which the form was signed unless an earlier termination is requested by the foreign importer.)

(e) *Use of repair station number.* (1) The approval of a foreign repair station under this procedure does not relieve the U.S. exporter of the requirement that he obtain a validated export license when applicable before making shipment to the repair station.

(2) Instead of submitting the supporting documents normally required as described above, an approved foreign importer shall advise his U.S. exporter of the Station Number assigned to his approved Form FC-43. The U.S. exporter shall then insert the following statement in the space entitled "Additional Information" on the license application or on an attachment thereto:

> The ultimate consignee named on this application is an approved foreign importer of aircraft or vessel repair parts and has been assigned Station Number (insert number).

A license application supported by a Station Number must be received in the Office of Export Licensing prior to the expiration date shown on the approved Form FC-43.

(f) *Records and reports.* (1) Any foreign importer approved under this procedure shall maintain records, in the detail set forth below, of commodities imported from the United States and supplied to aircraft or vessels. These records shall be kept for a period of 2 years from the date the commodities are supplied to such aircraft or vessel and shall be made available for inspection, upon demand, by the Office of Export Licensing or any accredited representative of the U.S. Government. In the event the foreign importer is prohibited by governmental regulation or statute from permitting a U.S. Government representative to inspect his records, the Office of Export Licensing will consider granting a waiver of this requirement and the substitution therefor of a calendar quarterly report setting forth the information contained in the records. Such request for waiver shall be part of the submission of Form FC-43 to the Office of Export Licensing, and shall include a citation to the governmental regulation or statute prohibiting the inspection of records, together with a certification that a calendar quarterly report, containing the information specified below, will be submitted to the Office of Export Licensing if the waiver request is granted.

(2) As a minimum, the records or reports shall include the following with respect to each aircraft or vessel on which U.S.-origin parts, accessories, equipment, or components are supplied:

(i) Name, business address, and nationality of the owner;

(ii) Country of registry;

(iii) Type of aircraft and model number;

(iv) If a vessel, the name of the vessel or other identification, and type of vessel;

(v) Date the commodities are supplied to the aircraft or vessel; and

(vi) The commodity description and units of quantity or value of the commodities supplied to the aircraft or vessel.

(g) *Extension of Validity Period of Form ITA-686P*—(1) *Request.* If there are no changes in the facts and commitments set forth in the Form ITA-686P originally approved by the Office of Export Licensing, a foreign importer may request the extension of an expiring Form ITA-686P by submitting a letter to the Office of Export Licensing, in an original and two copies, which includes the following certification: However, if there will be a change, to take effect upon validation of the extension, with respect to the facts originally certified on the approved Form FC-43, a new Form FC-43 must be submitted.

I (We) certify that the representations contained in my (our) Form FC-43, signed on ———— and expiring on ————, have not changed and continue to reflect, accurately and completely, the intended use and disposition of all commodities to be imported under Station No.———through the period ending (insert June 30 of next year or an earlier date if preferred).

I (We) shall obtain the approval of the Office of Export Licensing regarding any change in any representation that may occur after the signing of this certification.

(Name of foreign firm) ————————

(Signature of official of foreign firm) ——

(Typed or printed name and title of official)

(Date of signature) ————————

(2) If the request for extension is approved, one copy of the foreign importer's letter will be returned to him imprinted with the seal of the U.S. Department of Commerce. Where the request for extension is not approved, the foreign importer will be advised by letter.

[13th Gen. Rev. of Export Regs., 35 FR 9151, June 12, 1970, as amended by Amdt. 11, 35 FR 18317, Dec. 2, 1970; Amdt. 20, 36 FR 8370, May 5, 1971; Amdt. 25, 36 FR 15744, Aug. 18, 1971; 45 FR 37416, June 3, 1980; 46 FR 47067, Sept. 24, 1981; 47 FR 15112, Apr. 8, 1982; 48 FR 53066, Nov. 23, 1983; 49 FR 39155, Oct. 4, 1984; 50 FR 5972, Feb. 13, 1985; 52 FR 23168, June 18, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 24888, June 12, 1989]

SUPPLEMENT NO. 1 TO PART 773—COMMODITIES EXCLUDED FROM CERTAIN SPECIAL LICENSE PROCEDURES

EDITORIAL NOTE: The list of commodities excluded from certain special licensing procedures issued under this supplement appears at 45 FR 43140, June 25, 1980. For amendments to the list, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

SUPPLEMENT NO. 2 TO PART 773— PUTER—CONSIGNEE DESTINAT (LIST A)

NOTE: See Footnote No. 1 to entry nu 1565 in Supp. No. 1 to Part 773 for co ers that may be exported to countries below.

Australia, Belgium, Denmark, Fr Germany, Federal Republic of Greece, land, Italy, Japan, Luxembourg, Ne lands, New Zealand, Norway, Port Spain, Turkey, United Kingdom.

[44 FR 29448, May 21, 1979, as amende 51 FR 28693, Aug. 11, 1986. Redesignate 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 3 TO PART 773—C PUTER—CONSIGNEE DESTINATI (LIST B)

NOTE: See Footnote No. 1 to entry num 1565 in Supp. No. 1 to Part 773 for com ers that may be exported to countries li below:

Austria, The Bahamas, Barbados, Be Bolivia, Botswana, Burkina Faso, Buru Cameroon, Central African Republic, Ch Colombia, Congo, Costa Rica, Cyprus, minican Republic, Ecuador, El Salvad Ethiopia, Fiji, Finland, Gabon, The Gam Ghana, Grenada, Guatemala, Guin Bissau, Haiti, Honduras, Hong Kong, In nesia, Ireland, Ivory Coast, Jamaica, Jord Kenya, Korea, Republic of, Lebanon, Le tho, Liberia, Liechtenstein, Madagasc Malaysia, Maldives, Mali, Malta, Mauriti Mexico, Morocco, Nepal, Nicaragua, Niger Panama, Paraguay, Peru, Philippine Rwanda, Senegal, Sierra Leone, Singapor Somalia, Sri Lanka, Sudan, Surinam, Swa land, Sweden, Switzerland, Thailand, To Tonga, Trinidad and Tobago, Tunisia, Ur guay, Venezuela, Western Samoa, Yugosla ia, Zaire.

[44 FR 29448, May 21, 1979, as amended 45 FR 37416, June 3, 1980; 45 FR 54 Aug. 14, 1980; 49 FR 39155, Oct. 4, 1984; FR 23111, May 31, 1985. Redesignated at FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 4 TO PART 773—SPECIAL DISTRIBUTION LICENSE RESTRICTIONS FOR CERTAIN COMMODITIES INCLUDED IN THE COMMODITY CONTROL LIST

The following commodities are subject to certain special restrictions, as specified in the applicable footnote (see § 773.3(b)(2)).

1355A[2] Plasma-enhanced or photo-enhanced chemical vapor deposition (CVD) equipment, as defined in paragraph (b)(1)(ix);

Equipment specially designed for ion implantation, or for ion-enhanced or photo-enhanced diffusion, as defined in paragraph (b)(1)(vii);

Photo-optical step and repeat equipment, as defined in paragraph (b)(2)(vi).

1370A[2] Machine tools for generating optical quality surfaces, specially designed components and accessories therefor, and specially designed software.

1532A[2] Linear measuring machines, except optical comparators, with two or more axes having a range in any axis greater than 200 mm and an accuracy (including any compensation) less (finer) than 0.0008mm per any 300mm segment of travel, as defined in paragraph (b);

Angular measuring systems having an accuracy equal to or less than 1 second of arc, except optical instruments, such as auto-collimators, using collimated light to detect angular displacements of a mirror, as defined in paragraph (c).

1584[2] Cathode ray oscilloscopes having amplifier bandwidths greater than 500 MHz; Oscilloscopes having cathode ray tubes incorporating microchannel plate electron multipliers capable of operating at frequencies greater than 1000 MHz; Digital oscilloscopes with sequential sampling of the input signal at an interval of less than 2 nanoseconds.

1733A:[2] Base materials, non-composite ceramic materials, ceramic-ceramic composite materials and precursor materials for the manufacture of high-temperature fine technical ceramic products; Precursor materials polycarbosilanes and polydiorganosilanes (for producing silicon carbide), as defined in paragraph (d)(1); Polysilazanes (for producing silicon nitride), as defined in paragraph (d)(2);

Polycarbosilazanes (for producing ceramics with silicons, carbon and nitrogen components), as defined in paragraph (d)(3).

1746A[2] Non-fluorinated polymeric substances and manufactures thereof; aromatic polyamides, as defined in paragraph (c).

1757A[2] Semiconductor materials: monocrystalline silicon ingots (rods), slices or wafers; gallium and gallium III/V compounds; indium and indium compounds; hetero-epitaxial materials; elemental cadmium (Cd) and tellerium (Te) and cadmium terullide (CdTe) compounds; compounds (SiH_4, $SiClH_3$, $SiCl_4$, $SiCl_3H$ and $SiCl_2H_2$) used as the silicon source in the deposition of epitaxial layers of silicon, silicon oxide or silicon nitride; single crystal sapphire substrates; boron oxide (B_2O_3); and resist materials sensitive to X-rays, electron or ion beams, or specified for dry development.

[50 FR 21575, May 24, 1985, as amended at 51 FR 22504, June 20, 1986; 52 FR 33920, Sept. 9, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 25824, June 25, 1990; 55 FR 35839, Aug. 31, 1990]

SUPPLEMENT NO. 5 TO PART 773—INSTRUCTIONS FOR DISTRIBUTION LICENSE APPLICANTS WHEN COMPLETING FORM BXA-622P

(a) *Items 1, 5, 10 and 16:* See instructions in Supplement No. 1 to Part 772.

(b) *Item 2:* Enter "X" in the appropriate field to indicate which forms are attached. In the field marked OTHER enter "6052's", preceded by the number of consignees for whom forms were submitted.

(c) *Item 3:* If this is a resubmission of a previous application indicate the previous application control number, otherwise leave blank.

(d) *Item 4:* Enter, "Distribution License, Initial" or, if appropriate "Distribution License, Renewal." Include the six digit case number and "V" number of the previous license.

(e) *Items 7, 8, 13, 14:* Enter "N.A."

(f) *Item 6:* Enter "See Attached List" and label the attached list as "Attachment Item 6". When submitting an initial application, the list must include each consignee alphabetically by country. Complete addresses (city, street, etc.) must be furnished for each consignee. Post Office boxes are not acceptable. When submitting a renewal application, the consignees must be listed numerically by the consignee number previously assigned to them. This number should appear to the left of the name. This list must be submitted in duplicate. A separate list of those consignees being dropped from the renewal distribution license should also be included. Government agencies that meet the definition in § 775.2(b)(3) should be designated by the symbol (G) beside the name. Controlled-in-fact consignees should be designated by the symbol (A) next to their name, and independent consignees subject to written arrangements should be designated by the symbol (B) next to their names.

Also, if the application covers commodities listed in Supplement Nos. 1 or 4 to Part 773, the applicant shall prepare a list containing the end-user(s) of the commodities. Street and city addresses for each end-user must be furnished.

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[1] [Reserved]

[2] End-user data for OEL review and approval set forth in § 773.3(b)(2) is not required for shipment to countries listed in supplement 2 or 8 to part 773.

(g) Item 9 (a), (c), and (d) are all left blank. Item 9(b): List separately on the face of Form BXA-622P the Export Control Commodity Numbers (ECCN's) from the Commodity Control List (CCL) for the commodities proposed for coverage, with a summary description in estimated descending order of the anticipated export volume by value (e.g., 1565A computers; 1355A manufacturing machinery). Do not list more than the projected top six numbers. To the right of the commodity description put the estimated percentage of total exports under the license each such number is expected to represent in the first year following validation. Enter only the top six ECCN's on the face of the application.

(1) A separate list should be created (labeled "Attachment Item 9(b) Product Description") with a description of each type of commodity to be exported and the appropriate Export Control Commodity Number in the designated column. When the intent is to ship only certain types of goods within a CCL entry, the applicable paragraph designations should be listed. No entries totally excluded by Supplement No. 1 to Part 773 may be listed. Brochures or product literature may be supplied at the option of the applicant; this may expedite processing of applications involving potentially sensitive products.

(2) Listings on the attachment of entries that are partially excluded by Supplement Nos. 1 or 4 to Part 773 must have the notation "except (insert paragraph number or description)" after the entry.

(3) Only commodities included in a CCL entry (or paragraph, if applicable) specifically listed on the application or attachment and approved by OEL may be exported under a Distribution License.

(4) Spare or replacement parts for listed commodities may be included without specifying a CCL entry if such parts shipments will not exceed 20% of the value of the total exports under the license and the applicant lists on the application—"Spare and replacement parts for commodities included in CCL entries (list entries)."

(5) The listing of the CCL entries by Export Control Commodity Number (and sub-paragraph designation, if applicable) will generally constitute a sufficient description of the commodities to be shipped.

(h) Enter the following statement at the bottom of the attachment to Item 9(b):

"Description of Commodity or Technical Data"

No commodity excluded from the Distribution License Procedure under the Export Administration Regulations or under this license will be exported to any consignee in any destination under this Distribution License if this application is approved.

(i) *Item 11:* Enter "self" or name of ma facturing company. If more than one en "various" and describe in the comprehens narrative statement.

(j) *Item 12:* Enter "see attached 6052's".

(k) *Item 15:* In this field marked "Ad tional Information" enter an estimate the total dollar volume of sales or oth transactions with all consignees in the co modities involved during the last twel month period or last calendar year befo submission of the application. Speci whether the sales were under a previou Distribution License, Individual Validate License, or General License. This amou does not represent a limit to expected e ports.

(l) The pink copy entitled "Applicants Fi Copy" should be retained by the exporte before submission.

[54 FR 31813, Aug. 2, 1989]

Supplement No. 6 to Part 773—Instructions for Distribution License Applicants When Completing Form ITA-6052P

(a) Item 1: Enter the complete address (city, street, etc.) where the consignee is located. (If records required by §§ 773.3(m) and 787.13 are maintained/stored separately, indicate this in Item 7.) A P.O. Box alone is not acceptable but may be indicated in Item 7 for mailing purposes. In the absence of a complete address, Form ITA-6052P will be returned without action.

(b) Item 2: Check Distribution License block. Insert the complete name, street and city address of applicant. Items 2, 4c, 5a, 5d 9 and 10 are self explanatory.

(c) Item 3: Provide a summary description of the commodity(ies) proposed for import under the license. Firms that will not receive the entire range of products authorized on the license holder's Form BXA-622P may describe only the commodity(ies) they will receive. In some instances, consignee approval will be contingent on the nature of the product requested.

(d) Item 4a: The consignee must identify the nature of his/her principal business as it affects the disposition of commodities to be imported under this license (e.g., manufacturer, manufacturer/distributor, assembler/reseller, distributor, sales agent, warehouse).

(e) Item 4b: Indicate the relationship between the applicant and the consignee (e.g., controlled in fact subsidiary, consignee subject to contractual agreement ensuring compliance with Export Administration Regulations independent reseller.).

(f) Item 5a: This item should be completed by end-user consignees importing the commodity(ies) for their own use (e.g., as capital equipment).

(g) Item 5b: This item should be completed by end-user consignees incorporating commodities received into a new end-product so that the identity of the U.S. commodity is lost in the manufacturing process (e.g., U.S. origin semiconductor devices are included in a foreign origin test instrument). Destinations to which the products are intended to be exported may be expressed as country listings, geographic groupings, or Country Groups. OEL may exclude destinations in granting approval. The consignee should prepare an attachment labeled "Item 5(b) Cont." describing the new end-product more specifically and stating how and to what extent the U.S. origin items will be used. The consignee should further indicate whether the new end-product exceeds the parameters of commodities listed in Supplement No. 1 to Part 773 for the countries to which export or sale is proposed.

(h) Item 5c: This item should be completed by firms that are requesting authorization to furnish or reexport repair parts received under the Distribution License to customers who have received either U.S. origin commodities or foreign origin goods that incorporate U.S. origin parts, components or materials received by the consignee under the license.

(i) Item 5e: The consignee functioning as a distributor or reseller must list the specific countries to which the commodities are proposed to be reexported.

(j) Item 5f: This item should be checked by resellers to cover activities such as, but not limited to, the following:

(1) Assembling a finished product from kit form.

(2) Adding software to a U.S. computer or other device.

(3) Systems integration (*i.e.*, assembling hardware and various components/software for a specific application by an end-user customer).

(4) Equipment added as support equipment (e.g., test equipment being shipped with a foreign system).

(5) Communication/navigation equipment installed on a customer's aircraft, direction finding equipment on a fishing vessel, etc.

(6) Adding discrete U.S. components to foreign systems.

Parties engaged in such activities are required to describe the proposed activities fully in an attachment to Item 5(f) and to list countries to which the products derived from these activities are proposed to be exported.

(k) Item 6: Is not applicable to a Distribution License.

(l) Item 7: In addition to any supplemental information from other items, indicate whether the firm is an active participant (consignee) under any other Distribution Licenses, and give license and consignee numbers.

[50 FR 21576, May 24, 1985, as amended at 52 FR 9149, Mar. 23, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989]

SUPPLEMENT NO. 7 TO PART 773—KINDS OF COMMODITIES THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER § 773.5

The following is a list of the kinds of commodities that have been identified as meeting basic human needs. The list is not definitive but will be amended on an ongoing basis to reflect additional items, as they are identified, that meet these needs. The list is divided into categories that parallel the five basic human needs set forth in § 773.5(a): Health, food, clothing, shelter, and education. A degree of overlap exists, however, since an item listed as meeting one need may serve as well to meet additional needs. A sixth category of items is added to cover the non-commercial export of basic support equipment and supplies necessary to operate and administer the donative programs. The list is limited by the guidelines outlined in § 773.5(a), which confine the scope of the list to those items appropriate in addressing *basic* human needs through *small-scale* projects at the *local* level. Each item itself must be able to be described as "basic" and "small-scale" if it is to be eligible for export under this procedure. If the exporter is unsure whether a prospective donation falls within these guidelines, the procedure outlined in § 773.5(d) should be followed. Where applicable, replacement and spare parts for items that qualify for export under this Supplement may also be exported. Specific goods that may not be exported under a Humanitarian License are described in § 773.5(c).

NOTE: Motorized vehicles, watercraft and aircraft are not included in this Supplement. Requests to export such items to meet basic human needs may be made under the procedure described in § 773.5(d).

Health: equipment for the handicapped, hospital supplies and equipment, laboratory supplies and equipment, medical supplies and devices, medicine-processing equipment, medicines, vitamins, water resources equipment.

Food: agricultural materials and machinery suited to small-scale farming operations, agricultural research and testing equipment, fertilizers, fishing equipment and supplies suited to small-scale fishing operations, food, insecticides, pesticides, seeds, small-scale irrigation equipment, veterinary medicines and supplies.

Clothes and Household Goods: bedding, clothes, cooking utensils, fabric, personal hygiene items, soap-making equipment, weaving and sewing equipment.

Shelter: building materials, hand tools.

Education: books, individual school supplies, school furniture, special education supplies and equipment for the handicapped.

Basic Support Equipment and Supplies Necessary to Operate and Administer the Donative Program: audio-visual aids for training, generators, office supplies and equipment.

[51 FR 8484, Mar. 12, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 8 TO PART 773—OTHER COUNTRIES SUBJECT TO SPECIAL PROVISIONS

(Certain countries are listed in both Supplement No. 8 and Supplement No. 3. When there is a conflict between the provisions applicable to these two supplements, Supplement No. 8 shall prevail)

Austria

Finland

Sweden

Switzerland.

[51 FR 22504, June 20, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 53 FR 45899, Nov. 15, 1988; 55 FR 51278, Dec. 13, 1990; 55 FR 53490, Dec. 31, 1990]

PART 774—REEXPORTS

Sec.

774.1 Prohibited exports and reexports.

774.2 Permissive reexports.

774.3 How to request reexport authorization.

774.4 [Reserved]

774.5 Validity period.

774.6 Amendment of reexport requests.

774.7 Retention of documents.

774.8 Revocation of authorization to reexport.

774.9 Effect on foreign laws.

SUPPLEMENT NO. 1 TO PART 774—INSTRUCTIONS FOR PREPARING FORM BXA-699P, "REQUEST FOR REEXPORT AUTHORIZATION"

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861), September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (U.S.C. 1701 *et seq.*); E.O. No. 12730 of Se tember 30, 1990 (55 FR 40373, October 1990).

SOURCE: 40 FR 23991, June 4, 1975, unle otherwise noted. Redesignated at 53 F 37751, Sept. 28, 1988.

§ 774.1 Prohibited exports and reexpor

Unless the reexport of a commodi previously exported from the Unite States[1] has been specifically autho ized in writing by the Office of Expo Licensing prior to its reexport, or i authorized under the permissive ree port provisions of § 774.2, or is othe wise authorized under any other provi sion of the Export Administratio Regulations, no person in a foreig country (including Canada) or in th United States may:

(a) Reexport such commodity direc ly or indirectly, in whole or in par from the authorized country(ies) of u timate destination; or

(b) Export such commodity from th United States with the knowledge tha it is to be reexported, directly or ind rectly, in whole or in part, from th authorized country(ies) of ultimat destination.

[40 FR 23991, June 4, 1975, as amended a 44 FR 59229, Oct. 15, 1979. Redesignated a 53 FR 37751, Sept. 28, 1988]

§ 774.2 Permissive reexports.[2]

The following reexports of U.S.- origin commodities[3] may be mad without obtaining prior written au thorization from the Office of Expor Licensing:

(a) Reexports of any commodit that at the time of reexport:

(1) May be exported directly fro the United States to the new countr of destination under General Licens

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[1] The term "previously exported" enco passes not only commodities physicall transported from U.S. territory, but als commodities removed from U.S. jurisdictio through legal transfer of authority over a area, e.g., the transfer of the Panama Cana Zone from the United States to the Repub lic of Panama on October 1, 1979.

[2] See § 774.9 for effect on foreign laws.

[3] For reexport of technical data, se § 779.8.

G-DEST, G-TEMP [4], G-COM, G-COCOM, GFW, G-CEU, GCG, G-NNR, G-FTZ, GUS or BAGGAGE;

(2) Could be exported from the United States to the new country of destination under General License GLV;[5]

(3) Could be exported under General License *Ship Stores* or *Plane Stores* if the same vessel or aircraft were departing from a U.S. port, except that the equipment and spare parts described in §§ 771.9(a)(3) and 771.10(a)(3) may not be included in such reexporter; or

(4) May be exported directly from the United States to the country of destination under paragraphs (e) or (f) of General License GLR (§ 771.17). A party reexporting U.S.-origin one-for-one replacement parts or replacements for defective or unacceptable U.S.-origin equipment shall ensure that the commodities being repaired or replaced were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts or equipment, the replaced parts or equipment are either destroyed or returned to the United States or to the foreign firm in Country Groups T or V that shipped the replacement parts or equipment.

(i) A party reexporting U.S.-origin one-for-one replacement parts or replacements for defective or unacceptable U.S.-origin equipment shall ensure that the commodities being repaired or replaced were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts or equipment, the replaced parts or equipment are either destroyed or returned to the United States or to the foreign firm in Country Group T or V, except Iran or Syria that shipped the replacement parts or equipment.

(ii) If the replacement parts or equipment are being shipped to Country Group Q, S, W, Y, or Z, the People's Republic of China, or Afghanistan, submit one of the following written certifications on letterhead stationery, on a quarterly basis, to Director, Office of Export Licensing, Export Administration, P.O. Box 273, Washington, DC 20044:

(A) For one-for-one replacements (§ 771.17(e)):

I (We) certify that the commodity(ies) described below were reexported under the provisions of § 774.2 of the Export Administration Regulations as one-for-one replacement parts. The defective or otherwise unusable or worn out part(s) [was (were) returned to the United States on (date(s) of shipment to U.S.)] [was (were) returned to (name of foreign firm) on (date(s))] [was (were) destroyed abroad on (dates(s)) by (name of foreign firm)].

Quantity	Description of parts	ECCN	Dollar value

(B) For replaced equipment (§ 771.17(f)):

I (We) certify that the commodity(ies) described below were reexported under the provisions of § 774.2 of the Export Administration Regulations to replace defective or otherwise unusable U.S.-origin equipment previously (exported from the United States under validated export license ________) reexported from (name of country) under OEL Authorization No. ________. I (We) further certify that the defective or otherwise unusable equipment [was returned to the United States on (date of shipment to U.S.)]; [was returned to (name of foreign firm) on (date of receipt by foreign firm)]; [was destroyed abroad on (date) by (name of foreign firm)].

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[4] Commodities legally exported from the United States may be reexported to a new ountry(ies) of destination under General icense G-TEMP provided the restrictions escribed in § 771.22 are met and the commodities and software are returned to the ountry from which the reexport occurred.

[5] The permissive reexport provisions set rth above relating to the reexport of commodities within the established GLV dollar-lue limits do not apply to exports, reexrts, or distributions made under the Airaft and Vessel Repair Station Procedure. ee §§ 773.3 and 773.8.)

Quantity	Description of equipment (include characteristics such as model No., horsepower, size, etc.)	ECCN	Dollar value

(b) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding validated export license. Such reexports shall be reported on the reverse side of the license document, in the same manner exports are reported, regardless of whether the license is partially or wholly used for reexport purposes. The spaces marked "Name of Exporting Carrier" and "Point of Export or Post Office of Mailing", however, shall be used to indicate that the commodity was reexported and to enter the name and location of the firm from which the commodity was reexported.

(c) Reexports of any commodity from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under *any* general license;

(d) Reexports between Switzerland and Liechtenstein;

(e) Reexports between ultimate consignees as provided by the terms of: the Project License procedure (see § 773.2 (g)), or the Distribution License procedure (see § 773.3(i)).

(f) Reexports to a destination in Country Group T or V of a U.S.-origin commodity for servicing, and subsequent return of the serviced commodity to the original consignee, provided that the return of the serviced commodity complies with the conditions of § 771.17(a). When the serviced commodity will be returned to Country Groups Q, W, or Y, the reexporter must submit a report as required by § 771.17(a)(4).

(g) Reexports (return) to the United States of any commodity;[6] and

(h) Reexports from a foreign destination to Canada of any commodity if the commodity could be exported to Canada from the United States without a validated license.[6]

(i) Reexports from COCOM countries to Country Group Q, W or Y or to the People's Republic of China that meet the conditions set forth in § 774.3(e).

(j) Reexports from a COCOM participating country, Austria, Finland, Sweden, or Switzerland to the People's Republic of China that meet the requirements set forth in "Advisory Notes" for the People's Republic of China or for Country Groups Q, W, and Y in the Commodity Control List (Supplement No. 1 to § 799.1) and are licensed for shipment by that country.

(k) Reexports to and among COCOM participating countries, Austria, Finland, and Switzerland

(1) *Except:* (i) Supercomputers; and

(ii) Electronic, mechanical or other devices, as described in ECCN 4517B, primarily useful for surreptitious interception of wire or oral communications.

(2) *Provided* That: (i) Eligible commodities are for use or consumption within a COCOM participating country (as defined in § 774.3(e)(i)(D)(ii) Finland, or Switzerland, or for reexport from such country in accordance with other provisions of the Export Administration regulations; and

(ii) For reexports into Switzerland, the reexporting party has obtained a Swiss Blue Import Certificate if that document would be required for an identical shipment from the United States.

(3) *Reporting requirement:* (i) For reexports under this § 774.2(k), a reexport notification must be submitted in writing, signed by an authorized representative of the reexporter, to the Office of Export Licensing, P.O. Box 273, Department of Commerce, Washington, DC 20230, Attention: Reexport Notification, for the following:

(A) Reexports of commodities identified in Supplement Nos. 1 or 4 to Part 773 from a country other than a COCOM participating country, Finland, or Switzerland of commodities identified in Supplement Nos. 1 or 4 to Part 773; and

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[6] If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(B) The following equipment, regardless of the country from which the goods are reexported:

(*1*) ECCN 1355A: Lithography equipment for mask and reticle production capable of manufacturing integrated circuits with line width geometries of less than one micron; and

(*2*) ECCN 1357A: Filament winding machines with programs capable of operating in three or more axes specially designed to fabricate composite structures or laminates.

(ii) The reexport notification shall be transmitted to the Office of Export Licensing no later than the second business day following shipment, by airmail or other means intended to effect equally timely delivery.

(iii) The reexport notification shall identify:

(A) The reexporter and the new ultimate consignee;

(B) The type (including the ECCN, if known), quantity and value of the commodity;

(C) The actual or expected date of reexport; and

(D) If known, the original U.S. export license number under which the commodity was exported from the U.S. and the identity of the U.S. party from whom the reexporter received the goods.

[40 FR 23991, June 4, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 774.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 774.3 How to request reexport authorization.

(a) *Requests for Reexport Authorization for Commodities Not Yet Exported.* (1) At time of license application. If a U.S. exporter knows that a commodity that requires a validated license to be exported from the United States to a certain foreign destination will be reexported to a third destination requiring reexport authorization, such an authorization request shall be included on the license application. The application shall specify the country to which the reexport will be made. If it is stated on an individual export license application that the commodity to be exported is intended for distribution or resale in a country(ies) other than the named country of ultimate destination, authorization for such reexport will be granted or withheld by an appropriate statement on the face of the validated license, as follows:

(i) "Distribution or resale of the commodities listed above is permitted in (*name of country of ultimate destination*) and (*name of other approved countries*)," or

(ii) "Distribution or resale of the commodities listed above is permitted in the country of ultimate destination only."

Exporters are reminded that reexport authorization on an export license application is of no value to the ultimate consignee unless the exporter advises the consignee of the authorization. In addition, when the exporter has knowledge that the shipment will be reexported, and reexport authorization is not granted on the license or authorized under the permissive reexport provisions contained in § 774.2, no shipment may be made under the license until the consignee has agreed to the restriction.

Other methods for obtaining reexport authorization are set forth in the special licensing procedures (see part 773).

(2) *Amendment prior to export.* If a U.S. exporter learns that a commodity that is (i) included on a license application still pending with the Office of Export Licensing, or (ii) listed on a validated export license but not yet exported from the United States, is to be reexported from the country of destination shown on the application or license, he shall request such reexport authorization by submitting a Request for and Notice of Amendment Action, Form DIB-685P or IA-763, in accordance with the procedure described in § 772.11(h). In the "Amend license to read as follows" space on Form DIB-685P the applicant should state: "Add permission to reexport to (name of countries)."

(3) *Shipment to specified destinations.* If the reexport is to be made to any of the countries listed in § 774.3(c)(1)(i), the applicant shall—

(i) Include the name and address of the consignee in that country on the export license application or the amendment request; and

(ii) Submit supporting documentation with the license application or amendment, or retain supporting documents on file, as appropriate (see § 774.3(c)). Where § 774.3(c) permits a supporting document to be retained in the applicant's files, the applicant shall certify on the application or amendment that—

(A) The supporting document—or reproduced copy of the supporting document, as permitted by § 774.3(c)(1)(ii)—has been received (include the document number, if any, and date) and will be kept on file; or

(B) A facsimile of the supporting document (include the number, if any, and date) has been received and the original will be obtained and retained in the applicant's files prior to any shipment against the license; or

(C) A facsimile of the supporting document (include the number, if any, and date) has been received and will be retained in the applicant's files—as a reproduced copy of the supporting document—in accordance with § 774.3(c)(1)(ii).

(b) *Request for Reexport Authorization for Commodities Previously Exported.* To request authorization, submit the documentation described below to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

(1) *Formal request.* If a commodity previously exported from the United States to a foreign destination is to be reexported from such destination and such reexport is prohibited by the provisions of § 774.1, either the U.S. exporter or the foreign firm intending to effect the reexport shall submit a Request to Dispose of Commodities or Technical Data Previously Exported, Form DIB-699P or IA-1145, to the Office of Export Licensing. (See Supplement No. 1 to this Part 774 for instructions on completing the form.) If the reexport request is approved, the second copy of Form DIB-699P will be validated and returned to the applicant. If disapproved, the applicant will be advised of the reasons therefor.

(2) *Letter request.* If Form DIB-699P is not readily available, a letter may be submitted, subject titled "Reexport Request," setting forth the name and address of the applicant; general o validated license under which shi ment was previously made from th United States; name and address o new ultimate consignee; original ult mate consignee; whether reexpor sale, or other disposition is requested description of commodities, quantity and dollar value; and end use by new ultimate consignee. The applicant shall certify that the above statements are true to the best of his knowledge and belief, and that, if authorization is granted, he will be strictly accountable for its use in accordance with the *Export Administration Regulations* and all terms and conditions specified on the authorization. If the request is approved, the Office of Export Licensing will prepare the second copy of a Form DIB-699P, validate it, and forward it to the applicant. If disapproved, the applicant will be advised of the reasons therefor.

(3) *Shipment to specified destinations.* If a reexport is to be made to any of the countries listed in 774.3(c)(1)(i), the applicant shall—

(i) Submit the supporting documentation, along with the Form BXA-699P or letter request, to the Office of Export Licensing when the new destination is any country identified in § 774.3(c)(1)(i)(A) (*1*) or (*2*) or the commodity described on the application is a supercomputer; or

(ii) Retain the supporting document on file when the new destination is any country listed in § 774.3(c)(1)(i)(B), except that a supporting document must be submitted when the commodity described on the application is a supercomputer.

(4) *Emergency request and clearances.* Under emergency conditions, a reexport authorization request may be made by submitting either the completed Form ITA-699P or a Reexport Request letter. For exporters who follow these emergency procedures, the Exporter Assistance Staff will advise the applicants if their reexport authorization request does not warrant emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

(c) *Documentation requirements.* No supporting documentation need be submitted with a request for reexport authorization except as required for certain special commodities under the provisions of Part 776, or when one of the following conditions applies:

(1) *Reexports to specified destinations.*—(i) The consignee/purchaser statement or other documentation from the new ultimate consignee that would be required by part 775 of this subchapter if the reexport were a direct export from the United States to the new destination—

(A) Shall be submitted with the request for reexport authorization if the new destination is—

(*1*) Any destination in Country Group Q, W, Y, or Z (see Supplement No. 1 to part 770 of this subchapter for the countries included in each country group); or

(*2*) The People's Republic of China.

(B) Shall be retained in the applicant's records, in accordance with the requirements of parts 775 and 787 of this subchapter, if the new destination is a country in Country Group S or one of the following countries in Country Group V:

Afghanistan, India, Liechtenstein, Singapore, South Africa, Republic of, Sweden, Switzerland, Yugoslavia

However, if the commodity described on the application is a supercomputer, the supporting document must be submitted with the request for reexport authorization—not retained in the applicant's records.

(ii) If the required document is a Yugoslav End-Use Certificate, a Swiss Blue Import Certificate, a People's Republic of China End-User Certificate, a Singapore Import and Delivery Verification Certificate or an Indian Import Certificate and the same document must be furnished to the export control authorities of the country from which reexport will be made, the Office of Export Licensing will permit the applicant to submit or to retain on file, as appropriate (see § 774.3(c)(1)(i)), a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations. (See § 775.4(c) of this subchapter for waiver of a Swiss Blue Import Certificate, § 775.5(c) of this subchapter for waiver of a Yugoslav End-Use Certificate, and § 775.7(c) of this subchapter for waiver of an Indian Import Certificate.)

(2) *Temporary reexports.* If the transaction involves a temporary reexport for the purpose of demonstration, testing, exhibition, etc. to a destination listed above, the request for reexport authorization shall include a certification similar to that in § 772.8(c), suitably modified to describe the transaction and indicating the country to which the commodity will be returned. A consignee/purchaser statement or other documentation is not required.

(d) *Reexports from Switzerland and Liechtenstein.* If export from the United States was made, or will be made, to Switzerland or Liechtenstein under a validated export license, a request to reexport this commodity from Switzerland or Liechtenstein shall include the number and date of the Swiss Blue Import Certificate submitted in support of the license application to export the commodity from the United States.

(e) *Reexports from COCOM Countries.* (1) Separate specific reexport authorization by the Office of Export Licensing is not required if *all* of the following conditions are met:

(i) The commodities being exported:

(A) Are identified by an "A" on the CCL,

(B) Are *not* included in the "Advisory Notes" for those commodities in the CCL (Supplement No. 1 to § 799.1), (the Advisory Notes for the People's Republic of China do *not* apply in meeting this requirement),

(C) Are valued at more than $4,000 (except that commodities in CCL entries 1548, 1555, 1559, and 1781, and entries beginning with the digits 2 and 3, are eligible regardless of value), and

(D) If included in entry 1565A, have at least one parameter exceeding any of the parameters listed in Advisory Note 12 to that entry.

(ii) The reexport is from a COCOM participating country, i.e., Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the

Netherlands, Norway, Portugal, Spain, Turkey, or the United Kingdom;

(iii) The reexport is made in accordance with the conditions of the licensing authorization issued by the applicable COCOM participating country;

(iv) The reexport is to a country in Country Groups Q, W or Y, or the People's Republic of China; and

(v) The reexport has received unanimous approval from COCOM.

(2) All other reexports that require authorization under the Export Administration Regulations and do not qualify under these conditions must have specific authorization from OEL.

(3) The United States Government will begin its review upon receipt of a case submitted to COCOM by another COCOM participating country. When the COCOM submission does not include sufficiently detailed supporting information, additional information will be sought from the submitting government.

(4) A party to the transaction who wishes to know the status of cases submitted by the United States to COCOM may contact the Office of East-West Trade, EB/TDC, Department of State, Washington, DC 20520, telephone (202) 632-2584.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0625-0009)

[40 FR 23991, June 4, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting § 774.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

2. At 54 FR 6644, Feb. 14, 1989, § 774.3 was amended by revising "Form ITA-685P" to "Form BXA-685P" in three places in (a)(2), one of them in the concluding text. "Form ITA-685P" does not appear in this section; "Form DIB-685P" does. The DIB prefix is one which preceded ITA and should have been replaced already. Also there is no concluding text, and there are only two references in all of (a)(2). The agency will publish in the Federal Register to clarify its intent.

EFFECTIVE DATE NOTE: At 55 FR 46507, Nov. 5, 1990, § 774.3, paragraphs (a)(3), (b)(3), and (c)(1) were revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 774.3 How to request reexport authorization.

(a) * * *

* * * * *

(3) *Shipment to specified destinations.* If the reexport is to be made to any of the countries listed in § 773.3(c)(1), the name and address of the consignee in that country shall be included on the export license application or the amendment request, and the supporting documentation required by paragraph (c) of this section shall be provided.

(b) * * *

* * * * *

(3) *Shipment to specified destinations.* If a reexport is to be made to any of the countries listed in paragraph (c)(1), the documentation required by paragraph (c) shall also be submitted with Form DIB-699P or with the letter request.

(c) * * *

(1) *Reexports to specified destinations.* The consignee/purchaser statement or other documentation from the new ultimate consignee that would be required by Part 775 if the reexport were a direct export from the United States to the new destination shall be submitted with the request for reexport authorization if the new destination is:

(i) Any destination in Country Group Q, S, W, Y, or Z (see Supplement No. 1 to Part 770 for the countries included in each country group); or

(ii) The following destinations in Country Group V:

Afghanistan
China, People's Republic of
India
Liechtenstein
Singapore
South Africa, Republic of
Sweden
Switzerland
Yugoslavia

If the required document is a Yugoslav End-Use Certificate, a Swiss Blue Import Certificate, a People's Republic of China End-User Certificate, a Singapore Import and Delivery Verification Certificate, a Finnish Import Certificate, an Irish End-Use Import Certificate or an Indian Import Certificate and the same document must be furnished to the export control authorities of the country from which reexport will be made, Export Administration will accept a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations. (See § 775.4(c) for waiver of a Swiss Blue Import Certificate, § 775.5(c) for waiver of a Yugoslav End-User Certificate and § 775.7(c) for waiver of an Indian Import Certificate.

* * * * *

§ 774.4 [Reserved]

§ 774.5 Validity period.

(a) *Limitation on validity period.* Authorizations to reexport to Country Group Q, W, Y, or Z or Afghanistan are generally restricted to a limited validity period. Authorizations to reexport commodities to these destinations, whether authorized on a validated export license or separately, expire on the last day of the twenty-fourth month following the month in which the reexport is authorized, unless otherwise specified. The U.S. exporter shall, in connection with each such authorization, furnish written notification to the ultimate consignee of this limitation on the validity period of the reexport authorization. Reexport authorization to other destinations do not generally have a restricted validity period. (See § 779.8 for validity period of authorization to reexport technical data.)

(b) *Extension of validity period.* The validity period of any reexport authorization for commodities generally will not be extended. A request for extension will be considered by the Office of Export Licensing in the circumstances described in § 772.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request should be submitted on Form BXA-685P, Request for and Notice of Amendment Action, or by letter, in accordance with the following:

(1) *Extension by Form BXA-685P.* If the request for an extension of validity period of a previously approved reexport authorization is submitted on Form BXA-685P, enter the notation "BXA-699P" and the validation number and date of the original request for reexport authorization in tem 3 of Form BXA-685P instead of he license number as requested. In ddition, use the notation "Extension f validity period of Form BXA-699P" in Item 12 of Form BXA-685P.

(2) *Letter request for extension.* If Form BXA-685P is not readily available, the foreign applicant may submit a request for the extension of the validity period of a previously approved reexport authorization in a letter, subject titled "Request for Extension of Reexport Authorization Validity Period," containing—

(i) The name and address of the foreign applicant;

(ii) The name and address of the new ultimate consignee;

(iii) The case number, the validation number, the date of the original reexport request, and a copy of the approved authorization;

(iv) The countries involved in the proposed reexport transaction; and

(v) Justification for the extension.

The documentation normally required to support certain reexport requests under the provisions of § 774.3(c) is not needed to support a request for the extension of the validity period of a reexport authorization, provided that the original documents are still valid and remain in the possession of the Office of Export Licensing or in the applicant's files, as appropriate.

[40 FR 23991, June 4, 1975, as amended at 45 FR 37416, June 3, 1980; 48 FR 53066, Nov. 23, 1983; 51 FR 40158, Nov. 5, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989; 55 FR 46507, Nov. 5, 1990]

Effective Date Note: At 55 FR 46507, Nov. 5, 1990, in § 774.5, the concluding text of paragraph (b)(2) was revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 774.5 Validity period.

* * * * *

(b) * * *

(2) * * *

The documentation normally required to support certain reexport requests under the provisions of § 774.3(c) need not be resubmitted with a request for the extension of the validity period of a reexport authorization, provided the original documents are still valid and remain in the possession of the Office of Export Licensing.

§ 774.6 Amendment of reexport requests.

Reexport authorizations may be amended as necessary (see § 772.11) either by submission of Form BXA-685P or by letter in the same manner as that described in § 774.5(b), as appropriate. State the facts necessitating an amendment in Item 12 of Form BXA-685P or in the amending letter request. A reexport authorization may *not* be amended to change the country of ultimate destination or, on a single-consignee request, to delete the new ultimate consignee and substitute another. Such transactions require a *new* request for reexport authorization. The *addition* of ultimate consignees, however, is allowed by amendment when the authorization was issued originally with multiple consignees.

[52 FR 6139, Mar. 2, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989]

§ 774.7 Retention of documents.

The document authorizing reexport shall be kept and made available for inspection in accordance with the provisions of § 787.11.

(For further recordkeeping requirements, see § 787.11.)

§ 774.8 Revocation of authorization to reexport.

All export licenses and other authorizations to reexport are subject to revision, suspension, or revocation without notice.

§ 774.9 Effect on foreign laws.

Reexport or distribution authority granted by the Office of Export Licensing does not relieve any person from complying with foreign laws.

SUPPLEMENT NO. 1 TO PART 774—INSTRUCTIONS FOR PREPARING FORM BXA-699P, "REQUEST FOR REEXPORT AUTHORIZATION."

Item 1. Enter the name and telephone number of the person who can answer questions about the application.

Item 2a. Place an (X) in appropriate block(s) when other form(s) are attached.

Item 2b. Identify documents on file by placing an (X) in the appropriate block(s). These documents are to be retained by the applicant, consistent with the provisions of § 787.13, for Country Groups S and V (except the People's Republic of China). All other supporting documentation must submitted with the application.

Item 3. Enter original case number if t original case was returned without action.

Item 4. Complete only if stipulated in t Export Administration Regulations.

Item 5. Applicant as defined in the Expo Administration Regulation § 772.3(b)(1).

Item 6. The ultimate consignee in th country of ultimate destination is the part who will actually receive the material fo the end-use designated in Item 12. A bank freight forwarder, forwarding agent, o other intermediary is not acceptable as a ultimate consignee, but should be listed i Item 8 as an intermediate consignee. GOVERNMENT PURCHASING ORGANIZATIONS ARE ACCEPTABLE CONSIGNEES IN THOSE INSTANCES WHEN THE COMMODITIES OR TECHNICAL DATA DESIGNATED IN ITEM 9(b) ARE TO BE TRANSFERRED TO THE ULTIMATE END-USER, PROVIDED ACTUAL END-USE(S) ARE CLEARLY IDENTIFIED IN SUPPORTING DOCUMENTATION.

NOTE.—If a temporary reexport, applicant should be shown as ultimate consignee in care of person or entity who will have control of the goods abroad. Do NOT leave this item blank.

Item 7. The validated license number under which the commodity(ies) or technical data were originally exported.

Item 8. The original ultimate consignee is the entity listed in the original application for export in item 6.

NOTE.—For Items 9(a) through 9(d)—Use Supplement Form BXA 622P-A if additional space is needed.

Item 9(a). Give the quantity to be shipped, as identified in the Export Control Commodity Number (ECCN) located in Supplement No. 1 to § 799.1. If no specific unit of quantity is required by the entry or footnote, show the unit of quantity commonly used in the trade.

Item 9(b). PDR-Expressed in megabits per second. ONLY insert numerical value in PDR column. If not applicable insert N/A Place model # before description, followed by a colon (:). Put the model number(s) on a plain sheet of paper with the Application Control Number, and attach to the application.

Describe commodities or technical data. Furnish additional details as prescribed by the Export Administration Regulations when necessary to identify the specific items to be so classified. Include characteristics shown in the specific ECCN, such as basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc. These characteristics must be identified for the commodities or technical data proposed for reexport, which may be different from the characteristics described in the promotional brochure(s).

Where the specific ECCN entry states "specify by name," list by name on the application all the commodities or technical data to be included in the shipment. Include the ECCN paragraph reference at the end of the description. Processing Code: Enter the two character processing codes designated in the ECCN. Only one processing code may be entered per application.

Item 9(c). Enter the Export Control Commodity Number that corresponds to the commodity adjacent to the corresponding commodity description.

Item 9(d). Enter the unit price except where a large variety of products within a single ECCN makes such a breakdown extremely difficult. In such cases show only total price. Give the fair market value in U.S. dollars. Round to the nearest dollar the amount entered in the total price column. Give the exact value if less than $0.50. Where the normal trade practice makes it impractical to establish a firm contract price, state in item 15 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

Item 10. The Office of Export Licensing will transmit the reexport authorization to the party designated in this space. Leave blank if the license is to go to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Item 11. Provide a complete and detailed description for the end-use intended by the new ultimate consignee listed in Item 6. For guidance on completion of the item, refer to Supplement 1, Part 772 of the Export Administration Regulations. If additional space is needed, use Supplement Form BXA-622P-A or B.

Item 12. Complete only if end-user is not the ultimate consignee named in Item 6. If more than one end-user, insert the word "various" in the space and use Supplemental Form BXA-622P-B.

Item 13. Mark appropriate block with an (X) to identify if the commodity(ies) or technical data are to be reexported, sold or other. If "other" indicate disposition.

Item 14. When information is a continuation of a previous item(s) first state the item number(s). Do NOT put information from Item 9(a) through 9(d) in this space. Enter additional data pertinent to the transaction as required by the Export Administration Regulations. Include special certifications, names of parties in interest not disclosed elsewhere, such as foreign principal or supplier, explanation of documents attached, etc. If the application represents a transaction previously rejected, give prior case number issued by the Office of Export Licensing. Use Supplemental Form BXA-622P-A or B if additional space is needed.

Item 15. All three spaces must be completed and THE APPLICATION MUST BE MANUALLY SIGNED by the applicant or duly authorized agent of the applicant. If signed by agent of the applicant, show title and firm name or agent. (Rubber-stamped or other facsimile signatures are not acceptable.)

[54 FR 6645, Feb. 14, 1989]

PART 775—DOCUMENTATION REQUIREMENTS

Sec.

775.1 Introduction.

775.2 Form BXA-629P, statement by ultimate consignee and purchaser.

775.3 International import certificate and delivery verification certificate.

775.4 Swiss Blue Import Certificate.

775.5 Yugoslav End-Use Certificate.

775.6 People's Republic of China End-User Certificate.

775.7 Indian Import Certificate.

775.8 Documents accompanying applications.

775.9 Special provisions.

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95-223, title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 375 was redesignated as Part 775 at 53 FR 37751, Sept. 28, 1988.

§ 775.1 Introduction.

(a) Most export license applications and certain reexport authorization requests must be supported by documents designed to elicit information concerning the disposition abroad of the goods intended for export or reexport. Supporting documents for export license applications and reexport authorization requests where the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z must be submitted to the Office of Export Licensing along with the license applications or reexport requests. Supporting documents where the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) generally shall not be submitted to the Office of Export Licensing, but shall be retained in the applicant's files in accordance with the recordkeeping provisions of this part 775. However, if the commodity described on the application is a supercomputer, the supporting document shall be submitted to the Office of Export Licensing along with the application. Supporting documents are not required for Country Group T, unless the Office of Export Licensing specifically requests a supporting document.

(b) The following chart describes in brief the documents that are required in support of various types of proposed export transactions. Specific regulations governing the submission of these documents follow as indicated on the chart. See also § 775.8 for provisions common to two or more of the required documents.

If the commodity is	And the country of destination is	Required document is	For specific regulations see
1. Identified by the code letter A following the Export Control Commodity Number.	Australia, Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Greece, Hong Kong, Ireland, Republic of, Italy, Japan, Republic of Korea, Luxembourg, Netherlands, Norway, Pakistan, Portugal, Singapore, Spain, Sweden, Turkey, or United Kingdom.	International Import Certificate issued by the government of the country of destination.	§ 775.2
2. Identified by the code letter B, C, or M.	do	Statement by Ultimate Consignee and Purchaser (form DIB-629P).	§ 775.3
3. Identified by the code letter A, B, C, or M.	Switzerland and Liechtenstein	Swiss Blue Import Certificate issued by Swiss Government.	§ 775.4
4. Identified by the code letter A, B, C, or M.	Yugoslavia	Yugoslav End-Use Certificate issued by Yugoslav Chamber of Economy.	§ 775.5
5. Identified by the code letter A	People's Republic of China (PRC).	PRC End-User Certificate	§ 775.6
6. Identified by the code letter A or B and has "national security" in the Reason for Control portion of the CCL entry.	India	Indian Import Certificate	§ 775.7
7. Identified by the code letter A, B, C, D, E, F, G, or M.	All other destinations except those included in Country Group T.	Statement by Ultimate Consignee and Purchaser (Form ITA-629).	§ 775.3

(c) In addition, the exporter may also be required to obtain from the ultimate consignee and/or purchaser a document issued by the consignee and/or purchaser's government after shipment has been made. Detailed regulations governing submission of this document are contained in § 775.3(i).

[40 FR 59325, Dec. 23, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

Editorial Note: For Federal Register citations affecting § 775.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Effective Date Note: At 55 FR 46507, Nov. 5, 1990, § 775.1 was amended by designating the paragraph preceding the chart as paragraph (b) and the text following the chart as paragraph (c), by adding a new paragraph (a), and by removing the first sentence of newly designated paragraph (b) effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.1 Introduction.

Most individual export license applications and certain reexport authorization requests must be accompanied by supporting documents designed to elicit information concerning the disposition abroad of the goods intended for export or reexport.

* * * * *

§ 775.2 Form BXA-629P, statement by ultimate consignee and purchaser.

(a) *Scope*—(1) *Submission to OEL required.* A Form BXA-629P, Statement by Ultimate Consignee and Purchaser, shall be submitted to the Office of Export Licensing in support of each individual export license application when the commodity described on the application is a supercomputer or where the country of ultimate destination is located in Country Group Q, W, Y, or Z, unless one or more of the exemptions set forth in paragraph (b) of this section apply. Where § 775.6(c) permits substitution of a Form BXA-629P for the PRC End-User Certificate, a Form BXA-629P must be submitted in support of export license applications, unless one or more of the exemptions set forth in paragraph (b) of this section apply.

(2) *Retention in applicant's files.* When the country of ultimate destination is in Country Group S or V (except for the People's Republic of China) and the commodity described on the application is not a supercomputer, a Form BXA-629P shall be retained in the applicant's files, in accordance with § 775.2(k) and § 787.13 of this subchapter, unless one or more of the exemptions set forth in paragraph (b) of this section apply. When the applicant retains a Form BXA-629P on file, that fact, as well as the date of the Form BXA-629P, shall be clearly noted on the appropriate license application form. The applicant may submit a license application after receiving a facsimile of the completed Form BXA-629P, provided that this fact is noted on the application form together with a statement indicating that no shipment will be made against the license until the original copy of the Form BXA-629P is received and retained in the applicant's files.

(b) *Exemptions.* The provisions of this section do not apply if the license application covering the proposed shipment shows that any of the following conditions is present:

(1) An International Import Certificate (§ 775.3), a Swiss Blue Import Certificate (§ 775.4), a Yugoslav End-Use Certificate (§ 775.5), a People's Republic of China End-User Certificate (§ 775.6), or an Indian Import Certificate (§ 775.7) is required in support of the application.

(2) The total value of commodities classified under a single entry (ECCN) on the Commodity Control List (*as shown on the export order covering the application*) is less than $5,000. However, this total value exemption does not apply to an application supported by a Form ITA-629 covering multiple transactions.

NOTE: A license application listing several Commodity Control List entries qualifies for this exemption as long as the value of commodities classified under *each* ECCN does not exceed $5,000. In this case, the total value of the license may exceed $5,000.

(3) Both the ultimate consignee and purchaser are a foreign government(s) or foreign government agency(ies). However, if either is not a foreign government or government agency, then a statement from that nongovernmental party is required. For the purpose of this regulation, the term "government agency" is defined as follows:

(i) National governmental departments operated by government-paid personnel performing governmental administrative functions; e.g., Finance Ministry, Ministry of Defense, Ministry of Health, etc., Municipal or other local government entities must submit consignee statements.

(ii) National government-owned public service entities; e.g., nationally owned railway, postal telephone, telegraph, broadcasting, and power systems, etc. The term "government agency" does not include government corporations, quasi-government agencies, and state enterprises engaged in commercial, industrial and manufacturing activities, such as petroleum refineries, mines, steel mills, retail stores, automobile manufacturing plants, airlines, or steamship lines that operate between two or more countries, etc.;

(4) Shipment will be made by a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, to a member agency in the foreign country;

(5) The applicant is the same person as the ultimate consignee, provided he furnishes on the license application all

the applicable information that would be required in a consignee/purchaser statement. This exemption does not apply where the applicant and the consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms;

(6) The export will be made for display at a trade fair or exhibition, or for demonstration or testing purposes (see § 772.8(c));

(7) The ultimate consignee is an institution of higher learning (e.g., university, academy, college, etc.), located in Country Group V. The institution must have actually placed the order with the applicant and will take delivery when the shipment is received in the importing country. This exemption does not apply if the commodities to be exported are listed in Supplement No. 1 to Part 773, "Commodities Excluded From Certain Special License Procedures";

(8) Shipment will be made under the short supply provisions of Part 777; or

(9) The license application is for a Project License (§ 773.2), Distribution License (§ 773.3), Service Supply License (§ 773.7), or is supported by Form ITA-686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts (§ 773.8).

NOTE: Pursuant to § 772.5, the Office of Export Licensing may require an applicant to furnish a Form DIB-629P, Statement by Ultimate Consignee and Purchaser, in support of a pending application even though the document is exempted by this § 775.2(b).

(c) *Filing of applications where no statement is attached or on file with the applicant.* When a consignee/purchaser statement is not submitted in support of an application, as required in paragraph (a) of this section, the application will be returned without action to the applicant. An application will also be returned without action when the applicant, though required by paragraph (a) of this section to retain a consignee/purchaser statement on file, fails to certify on the application form that this has been done. However, if an applicant can show that diligent efforts have been made to obtain such a statement, without success, the applicant may advise the Office of Export Licensing in the space provided for additional information on the application or on attachment to the application, givi the reasons stated by the ultima consignee or purchaser for failing refusing to supply the statement. satisfied by the evidence presente the Office of Export Licensing wi consider waiving the supporting docu mentation requirement and acceptin the application for processing.

(d) *Single/Multiple Transactions.* (1 Completion of Form DIB-629P, State ment by Ultimate Consignee and Pur chaser. Form DIB-629P, Statement by Ultimate Consignee and Purchaser, i designed for use in support of (i) an application covering a single purchase order placed with one exporter by one ultimate consignee (and only one purchaser if different from the ultimate consignee) for one or more commodities or (ii) a series of applications involving recurring orders from the same consignee and/or purchaser for the same commodity(ies) to the same destinations and for the same end uses. Use of Form DIB-629P as a multiple consignee/purchaser statement is suggested when the exporter has a continuing and regular business relationship with the ultimate consignee.

(2) *Single purchase order.* When Form DIB-629P is to be used as a single transaction statement, Item 2 should be completed by checking box "a"; and item 3 should be completed by specifying quantity and value as well as commodity description. See § 775.2(e) for detailed instructions related to information required on the Form.

(3) *Multiple purchase orders.* When Form DIB-629P is to be used as a multiple transactions statement or in support of a Time Limit (TL) license application, Item 2 should be completed by checking box "b" and specifying the expiration of the statement only if earlier than June 30 of the second year after signing. Item 3 should be completed by entering a description of the commodity(ies) in terms sufficiently definite to identify them clearly, but broad enough to include all commodities to which the statement applies. DO NOT ENTER QUANTITY OR VALUE. If either quantity or value is included, the statement will be considered a single transaction state-

ment and will be limited to such quantity or value. See paragraph (e) of this section for detailed instructions related to information required on the Form.

(4) *Number of copies to be submitted.* When applicants are required to submit copies of Form BXA-629P to the Office of Export Licensing, as indicated in paragraph (a) of this section, only the original Form BXA-629P need be submitted for a single transaction. The original and one copy must be submitted for multiple transactions.

(e) *Information required on Form BXA-629P.* All of the information required by this paragraph, or by Form DIB-629P, shall be furnished if applicable to the transaction. If such information is unknown, the fact should also be disclosed. The printed name, address, or nature of business of the ultimate consignee or purchaser appearing on his letterhead or order form shall not constitute evidence of either his identity, the country of ultimate destination, or end use of the commodities described in the application. Any additional facts that the consignee or purchaser believes will be of value to the Office of Export Licensing in the consideration of license applications submitted in his behalf by the U.S. exporter should be entered in the space entitled "Additional Information," or on an attachment.

(1) *Assistance in preparing form.* The applicant or his agent may assist in completing the form prior to its being signed by the consignee and purchaser, if necessary and appropriate. If so, the name of the person assisting shall be shown in the space entitled "Assistance in Preparing Statement."

(2) *Commodity description.* The commodities to which the Statement applies shall be described in terms that will enable the Office of Export Licensing to determine readily that the commodities on a license application are adequately covered by the commodity description on the related Form DIB-629P. If not, the applicant should add an explanatory note on the application in the space entitled "Commodity Description" or on an attachment, to make the relationship clear. When Form DIB-629P is completed as a single transaction statement, the commodities should be described in detail, giving such particulars as the name, model or type number, basic ingredients, composition, size, gauge, grade, or horsepower. If possible, describe in accordance with the Commodity Control List (Supplement No. 1 to § 799.1). Where Form ITA-629 is completed as a multiple transactions statement, the commodity description shall be stated in terms sufficiently definite to identify the commodities clearly, but broad enough to include all commodities to which the statement applies; *e.g.*, a commodity description set forth in a Group title of the Commodity Control List, such as "Metal-Working Machinery" usually would be a satisfactory description for any or all of the commodities included under that group.

(3) *Commodities to be reexported.* Acceptance of a Form DIB-629P as a supporting document shall not be construed as an authorization by the Office of Export Licensing to reexport the commodities in the form in which received even though the intention to reexport is indicated thereon. Such authorization to reexport is not granted on the basis of information on this form but as a result of a specific request by the U.S. exporter on the license application, or upon request of the consignee (either directly or through the U.S. exporter) after the license is issued (see Part 374 on reexports).

(4) *Commodities to be used as components in foreign manufacture.* Form DIB-629P requires information as to the specific end use of the commodities. If the ultimate consignee will use the commodity(ies) to produce other end products, he should show in the space entitled "The specific end use by my customer will be," the names of the end products to be manufactured, the country(ies) where the production or manufacture will take place, and the country(ies) in which the end product will be distributed, if these facts are known.

(5) *Quantity and value on Form DIB-629P.* When Form DIB-629P is prepared as a single transaction statement, the quantity and (if known) the value of commodities ordered should

be shown in the appropriate items of the Form. If actual value is not known, an estimated value should be shown and labeled "estimate." If it is impossible to determine an estimated value, the word "Unknown" should be shown, together with an explanation of the reason why an actual or estimated value cannot be provided. If the commodity is licensed in terms of dollar value and the statement indicates that the value is "unknown," the Office of Export Licensing will consider the approval of one application against the Form DIB-629P provided the applicant states on the license application that the transaction described on the application is the same as that described on the Form DIB-629P. An application for an export license will not be approved for a quantity or value significantly in excess of the actual or estimated quantity or value shown on the Form DIB-629P. When Form DIB-629P is prepared as a Multiple Transactions Statement, quantity and value should be omitted, since the form will cover all transactions between the named parties for a period of as much as 18 to 30 months. Forms indicating quantity or value will be treated as Single Transaction Statements.

(6) *Validity period.* The first application to be supported by a Form BXA-629P that is prepared as a single transaction statement must be submitted to the Office of Export Licensing within 180 days after the Form BXA-629P is signed by the consignee or purchaser, whichever date is later. There is no specific time limit for submitting the first application supported by a Form BXA-629P prepared as a multiple transactions statement, but any license applications suported by a multiple transactions Form BXA-629P must be received by the Office of Export Licensing prior to the termination date as shown in Item 2 of the form. The form will expire on June 30 of the second year following the year in which it is signed, unless the consignee or purchaser enters an earlier date in Item 2. For example, a Form ITA-629 signed any time between January 1, 1980 and December 31, 1980, can be used to support license applications filed on or before June 30, 1982 if no earlier date is entered in Item 2. If, i this example, a termination date earl er than June 30, 1982 is entered i Item 2 of the form, the Form ITA-62 could be used to support only applica tions filed before that date. During its validity period, a Form ITA-629 prepared as a multiple transactions statement will be deemed as supporting all exports of the specified commodities from the U.S. exporter to the same consignee and purchaser for which license applications are submitted to the Office of Export Licensing (*including* those that are based on export orders of less than $5,000 and would therefore not be subject to this same requirement under the procedure for a single transaction statement).

(7) *Signatures.* The Form DIB-629P must be manually signed either by:

(i) The ultimate consignee (the person abroad who is actually to receive the material for the designated end use), and by the purchaser (the person abroad who has entered into the export transaction with the applicant to purchase the commodities for delivery to the ultimate consignee) if the purchaser is not the same party as the ultimate consignee, or

(ii) Responsible officials representing the ultimate consignee and purchaser, respectively, who have personal knowledge of the information included in the statement, who have authority to bind the ultimate consignee and purchaser for whom they sign and who have the power and authority to control the use and disposition of the licensed commodities in the country of ultimate destination. The authority to sign this statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his official position with the ultimate consignee or purchaser for whom he signs. The signing official may be located in the United States or in a foreign country. his official title must be included with his signature. Where the purchaser is not the ultimate consignee, the purchaser may execute a separate statement if more convenient. The purchaser's statement must meet the same requirements of content, signatures, etc. as required for the ultimate consignee's statement.

(f) *Responsibility of parties to transaction.* (1) Order party must sign in some cases. If the applicant for license is not named on the consignee/purchaser statement, the order party provisions of § 772.6(c) must be observed.

(2) Ultimate consignee and purchaser. In accordance with the certification on the Form DIB-629P, the consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and belief and must promptly send a supplemental statement to the U.S. exporter if changes in the facts or intentions as set forth in their statement(s) occur after such statement has been forwarded. Further, no commodities covered by the statement may be disposed of contrary to:

(i) The representations made in the statement, or (ii) the limitations on countries of distribution indicated on the bill of lading, commercial invoice, or other comparable documents, without obtaining approval of the Office of Export Licensing, through the U.S. exporter, prior to such disposition. Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject the ultimate consignee and/or purchaser to administrative action by the Office of Export Licensing, which may include suspension, revocation, or denial of licensing privileges and denial of other participation in exports from the United States.

(g) *Corrections, additions, or alterations.* After a Statement by Ultimate Consignee and Purchaser, Form DIB-629P, has been signed by the consignee or purchaser, no corrections, additions, or alterations may be made by any person other than the consignee or purchaser. (The signing of the exporter's certification on the form is not construed to be a correction, addition, or alteration of the form within the meaning of this § 775.2(g). If the signed statement is incomplete or incorrect in any respect, the applicant shall obtain a corrected statement from the consignee and/or purchaser. Where the statement contains corrections, additions, or alterations that appeared on the statement at the time of receipt from the ultimate consignee or purchaser, the applicant shall sign the certification in the "Certification for Use of U.S. Exporter" space on the form or attach the following certification to the statement:

> I (We) certify that no corrections, additions, or alterations were made on the attached Form DIB-629P by me (us) after the form was signed by the (ultimate consignee) (purchaser).

If the applicant or agent makes any corrections, additions, or alterations on the form when assisting in its preparation (as explained in paragraph (e)(1) of this section) the applicant shall advise the Office of Export Licensing in writing of the change(s) made and reason(s) for making them. The letter shall also include the certification shown above.

(h) *Amendment of Statement by Ultimate Consignee and Purchaser, Form DIB-629P.* Where a Form DIB-629P is on file in the Office of Export Licensing, an amendment to the statement may be submitted in the form of an additional Form DIB-629P or the original or copy of a wire or cable from the ultimate consignee. Sufficient information must be submitted with the amendment to permit the Office of Export Licensing to identify it with the statement already on file, such as name of consignee or purchaser, date of signing; case number of the license application with which the statement was submitted to the Office of Export Licensing; applicant's reference number; etc.

(i) *Extension of validity period of Statement by Ultimate Consignee and Purchaser.* The validity period of a Form DIB-629P prepared as a multiple transactions statement may be extended only by the submission of a new Form DIB-629P prior to the expiration of a current form.

(j) *License applications supported by Form DIB-629P, Statement by Ultimate Consignee and Purchaser.* (1) Relationship of information on Statement by Ultimate Consignee and Purchaser to license application and export license. Information supplied by a consignee or purchaser on a Form DIB-629P cannot be construed as extending or expanding the specific information on a license application or an export license resulting therefrom.

With regard to disclosure of facts pertaining to an individual export transaction, the license application covering the transaction must be selfcontained. The authorizations contained in the resulting export license are not extended by the general information contained in the Statement by Ultimate Consignee and Purchaser with regard to reexport from the country of destination or with regard to any other facts relative to the transaction as reported on the application.

(2) *Multiple transactions.* A license application supported by a Form DIB-629P, with Item 2b completed, shall contain the following statement in the item entitled "Additional Information" or on an attachment:

> This application is supported by the Multiple Transactions Statement by Ultimate Consignee and Purchaser dated ———— from the named consignee to this applicant.

(3) *Single transaction.* Where a Form DIB-629P has Item 2a completed and the statement (Form DIB-629P) covers a purchase order for commodities that require more than one license application, each application supported by a Statement by Ultimate Consignee and Purchaser must contain the following certification by the applicant in the space entitled "Additional Information" or on an attachment:

> I (We) certify that the quantities of commodities shown on all export licenses based on the Single Transaction Statement by Ultimate Consignee and Purchaser dated ————, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Statement by Ultimate Consignee and Purchaser, including the present application, do not total more than the quantities shown on that statement. This Statement by Ultimate Consignee and Purchaser was submitted in support of application number (*insert case number, or if case number is unknown, the applicant's reference number, date of submission of the application to which the Statement by Ultimate Consignee and Purchaser was attached, and Export Control Commodity Numbers and Processing Number shown on that application*).

(k) *Procedures for retaining Form BXA-629P in applicant's files.* (1) Any applicant required to retain Form BXA-629P on file pursuant to the requirements of paragraph (a) of th section must adhere to all of the re ordkeeping provisions contained i § 787.13 of this subchapter, excep that reproductions may not be subs tuted for original documents as pe mitted under § 787.13(d)(2) of this su chapter.

(2) The fact that the applicant has Form BXA-629P on file, as well as th date of the Form BXA-629P, must b clearly noted on all export license ap plications suported by the consignee purchaser statement. If the consignee/purchaser statement is a multiple transactions statement, the certifica tion provided in paragraph (j)(2) of this section shall be included on the application or on an attachment thereto.

(3) An applicant may submit an application before obtaining the original copy of the Form BXA-629P, provided that—

(i) The applicant has recevied a fac simile of the Form BXA-629P at the time the license application is filed and

(ii) The applicant states on the application that a fascimile of the Form BXA-629P has been received and that no shipment will be made against the license prior to obtaining the original Form BXA-629P and retaining it on file.

[40 FR 59325, Dec. 23, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 775.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 46[illegible] Nov. 5, 1990, § 775.2 was amended by revising the section heading and paragraphs (a), (c), and (d)(4), by revising the heading of paragraph (e) and the first four sentences in paragraph (e)(6), and by adding a new paragraph (k), effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.2 Form ITA-629, Statement by Ultimate Consignee and Purchaser.

(a) *Scope.* A Form DIB-629P, Statement by Ultimate Consignee and Purchaser, is required, unless one or more of the exemptions set forth in paragraph (b) of this section apply, in support of each individual export license application where the country of ultimate destination is in Country

Group Q, S, V, W, Y, or Z. In addition, a Form DIB-629 is required in support of reexport authorization requests involving shipments to certain countries as specified in Part 774. This document may be completed, at the ultimate consignee's option, to cover a single transaction or multiple transactions. Detailed instructions for completion and use of the form are set forth in paragraph (c) through (j) of this section. The Form DIB-629P is required by the Office of Export Licensing to assure that foreign consignees and purchasers are fully aware of their responsibilities for the representations made to the Office of Export Licensing and for the disposition of the licensed commodities only in those foreign countries where the Office of Export Licensing has specifically authorized disposition.

* * * * *

(c) *Applications filed without statements.* Where an application requiring a consignee/purchaser statement is not accompanied by such statement, the application will be returned without action to the applicant. However, if an applicant can show that he has made diligent efforts to obtain such statement and has been unable to do so, he may advise the Office of Export Licensing in a letter attached to his application, giving the reasons stated by the ultimate consignee or purchaser for failing or refusing to supply the statement. If satisfied by the evidence presented, the Office of Export Licensing will consider the application for approval.

(d) * * *

* * * * *

(d) *Number of copies to be submitted.* Only the original Form 629P need be submitted for a single transaction. The original *and* one copy must be submitted for multiple transactions.

(e) *Information required on Form DIB-629P.* * * *

* * * * *

(f) *Validity period.* The original of a Form ITA-629 prepared as a single transaction statement should be submitted to the Office of Export Licensing with the first applicable license application. The statement must be submitted within 180 days after it is signed by the consignee or the purchaser, whichever date is later. There is no specific time limit for submitting an ITA-629 prepared as a multiple transactions statement to the Office of Export Licensing, but such statements may not be used to support license applications filed after the termination date shown in Item 2 of the form. The form will expire June 30 of the *second* year following the year in which it is signed, unless the consignee or the purchaser enters an earlier date in Item 2. * * *

* * * * *

§ 775.3 International import certificate and delivery verification certificate.

(a) *Scope*—(1) *International Import Certificate.* An International Import Certificate (IC) is an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the commodities covered by the IC. The governments that issue ICs are listed in § 775.3(b). The IC is obtained by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The exporter (applicant) must obtain an IC and retain it on file, in accordance with the provisions of § 775.3(g)(1) and § 787.13 of this subchapter, for any license application to export a commodity(ies) identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List to one of the destinations listed in § 775.3(b). If the commodity described on the application is a supercomputer, the IC must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files. The IC is not required if one of the exemptions in § 775.3(d) applies. An IC may also be required for transactions not involving an export from the United States. (See § 768.2(a)(8) of this subchapter.)

(2) *Delivery Verification Certificate.* A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the commodities have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DV's are listed in § 775.3(b). The Office of Export Licensing requires DV's on a selective basis as described in § 775.3(i).

(3) *Effect of IC and DV.* The control exercised by the government issuing an International Import Certificate or Delivery Verification Certificate is in

addition to conditions and restrictions placed on the export by the Office of Export Licensing. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an International Import Certificate or a Delivery Verification Certificate.

(b) *Destinations.* The following country destinations are subject to the International Import Certificate/Delivery Verification Certificate System requirements.[1]

Australia
Austria
Belgium
Denmark
Finland
France
Germany, Federal
  Republic of
  (including West
  Berlin)
Greece
Hong Kong
Ireland, Republic of
Italy
Japan
Korea, Republic of
Luxembourg
Netherlands
Norway
Pakistan
Portugal
Singapore
Spain
Sweden
Turkey
United Kingdom

(See Supplement No. 1 to this Part 775 for the list of addresses in the above country destinations where foreign importers may obtain International Import Certificates.) The provisions of this § 775.3 do not apply to any overseas territories of the above destinations unless specifically listed.

(c) *Documentation provisions*—(1) *Terms used.* As used in this § 775.3, the terms "International Import Certificate," "Delivery Verification Certificate," "Entrance Verification Certificate," "Irish End-Use Import Certificate," "Landing Certificate," and "Singapore Import and Delivery Verification Certificate," refer to the documents issued by governments of the countries listed in § 775.3(b) above to importers in such countries and are equivalent documents for Form 645P/ATF-4522/DSP-53, Interna al Import Certificate, and Form 647P, U.S. Delivery Verification Ce icate issued to U.S. importers §§ 768.2 and 768.3).

(2) *Triangular symbol.* In accord with international practice, the ernment issuing office may stam triangular symbol on the Internat al Import Certificate. This symbo notification that the importer not intend to import or retain commodities in the country issuing import certificate, but that, in case, the commodities will not be de ered to any destination except in cordance with the export regulati of the issuing country.

(d) *Exemptions.* Import Certific requirements shall not apply to:

(1) A license application to exp commodities classified in a sing entry on the Commodity Control Li the total value of which, as shown the export order, is less than $5,0 except where a multiple transactio Import Certificate is filed in accor ance with paragraph (g)(2) of this se tion;

(2) A license application to expo commodities to a foreign governme or government agency that actuall placed the order with the applica and will take delivery of the commod ities when received in the importing country (see § 775.2(b)(3) for defini tion of "government agency");

(3) A license application filed by relief agency registered with the Advisory Committee on Voluntary Foreig Aid, Agency for International Deve opment, for export of commodities to a member agency in the foreign country;

(4) A license application to expor commodities for exhibition, demonstration, or testing purposes (see § 772.8(c));

(5) A license application to expor commodities to an institution of higher learning (e.g., university, academy, college, etc.). The institution mus have actually placed the order with the applicant and will take delivery when received in the importing country. This exemption does not apply if the commodities to be exported are listed in Supplement No. 1 to Part 77

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[1] See § 775.4 for Swiss Blue Import Certificate requirements, § 775.5 for Yugoslav End-Use Certificate requirements, § 775.6 for People's Republic of China End-User Certificate requirements. EDITORIAL NOTE: At 54 FR 21050, May 16, 1989, § 775.3 was amended by removing footnote 1 and its reference and redesignating footnote 1a as footnote 1. As there was no footnote 1a, the material quoted in the amendatory language has been removed and the balance of footnote 1 retained. The agency will publish in the future to clarify its intentions.

"Commodities Excluded From Certain Special License Procedures;

(6) A license application filed under the short supply provisions Part 777; or

(7) A license application for a Project License (§ 773.2), Distribution License (§ 773.3), Service Supply License (§ 773.7); or supported by Form ITA-686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts (§ 773.8).

(e) *Exceptions.* (1) Grounds for exception. Favorable consideration of a request for exception generally, will be given where the International Import Certificate requirement:

(i) Imposes an undue hardship on the applicant and/or ultimate consignee (e.g., refusal by the foreign government to issue an Import Certificate and such refusal constitutes discrimination against the U.S. exporter); or

(ii) Cannot be complied with (e.g., the commodities will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(iii) Is not applicable to the transaction (e.g., the commodities will not be imported for consumption into the named country of destination).

An exception will not be granted contrary to the objective of the U.S. export control program. The procedure to follow in requesting an exception is set forth in § 775.9(g).

(f) *Relationship to Form DIB-629P, Statement by Ultimate Consignee and Purchaser.* (1) The requirement of a Form DIB-629P, Statement by Ultimate Consignee and Purchaser (§ 775.2) is not applicable where an International Import Certificate is required by this section.

(2) Where an International Import Certificate is not specifically required by this section, an export to a country destination listed in paragraph (b) above is subject to the requirement of a Statement by Ultimate Consignee and Purchaser, Form DIB-629P, and an Import Certificate may not be substituted for that statement.

(3) When the code letter "A" following the Export Control Commodity Number is replaced by another code letter, the commodities covered by that entry are removed from the International Import Certificate requirements of this section. Neither a new International Import Certificate nor an International Import Certificate previously submitted to the Office of Export Licensing will be accepted in lieu of the required Statement of Ultimate Consignee and Purchaser in support of a license application that is submitted to the Office of Export Licensing after the change in the code letter (See § 775.9(b) for Grace Period.)

(g) *Retention of International Import Certificate*—(1) Any applicant required to retain an International Import Certificate on file pursuant to paragraph (a)(1) of this section must adhere to all of the recordkeeping provisions contained in § 787.13 of this subchapter, except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(2) The applicant must clearly note the number (if any) and the date of the International Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the IC has been received and will be retained on file as required by paragraph (g)(1) of this section. However, the applicant may submit an application before obtaining the original copy of the IC, provided that—

(i) The applicant has received a facsimile of the IC at the time the license application is filed; and

(ii) The applicant states on the application that a facsimile of the IC has been received and that no shipment will be made against the license prior to obtaining the original IC and retaining it on file.

(3) If an International Import Certificate is used in support of more than one export license application, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, one of the following certifications bearing the original signature of the applicant—(i) if quantity or value is shown on the Certificate:

I (We) certify that the quantities (values) of commodities shown on all export licenses based on the (*name of country*) International Import Certificate Number ________, when added to the quantities (values) shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application, do not total more than the quantities (values) shown on that Import Certificate. This Import Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

or

(ii) If quantity or value is not shown on the Certificate:

I (We) certify that this application is supported by the (*name of country*) multiple transactions International Import Certificate Number ________, which was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

(h) *Other requirements applicable to both single and multiple transactions Import Certificates*—(1) *Parties named on Import Certificate.* The International Import Certificate may be used in support of an export license application when the Certificate is made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country. If they are not located in the same country, an Import Certificate, a consignee/purchaser statement, or other applicable equivalent document is required from the party located in the country of ultimate destination. The U.S. exporter named in the Import Certificate must appear as applicant, supplier, or order party on license applications submitted to the Office of Export Licensing.

(2) *Commodity description.* The exporter should furnish his consignee the commodity description shown on the Commodity Control List and advise him to use this description when applying for the Internatio Import Certificate from his gove ment. In addition, where the commo ty is a new or highly technical pro uct, it is advisable also to furnish manufacturer's catalog or bulletin, printed pages describing the commo ty. This will assist the foreign gover ment in determining whether the com modity meets the criteria for the iss ance of an International Import Ce tificate.

(3) *Validity period.* When an International Import Certificate is obtaine in support of one or more export license applications, the applicant mu submit the first application to be supported by this Certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date the Certificate was issued by the foreign government, whichever is shorter. In addition, any subsequent export license application supported by such Certificate must be submitted to OEL within 12 months from the date that the first export license application supported by the Certificate was submitted to OEL. The expiration of the validity period of an International Import Certificate, after the submission of the first export license application supported by the Certificate, will in no way affect the validity period of the resultant export license(s).

(4) *Triangular transactions.* Whenever an International Import Certificate bearing a triangular symbol i used in support of an export license application, the applicant must identify—on the application—all parties to the transaction, including parties located outside the country that issued the Import Certificate. If the importe objects to giving this information to the U.S. exporter, the importer may submit it directly to the Office of Export Licensing through a U.S. Foreign Service post or in a sealed envelope to the exporter, marked "To be opened by the Office of Export Licensing only."

(5) Issuance of an International Import Certificate does not relieve the parties to the transaction from compliance with the reexport provisions of part 774 of this subchapter.

(6) *Alterations.* After an International Import Certificate is issued by the foreign government, no corrections, additions, or alterations may be made on such Certificate by any person. (See § 787.10 on unauthorized use and alterations of export control documents.) If the exporter desires to explain any information on the Certificate, he may attach thereto a signed statement to that effect.

(i) *Delivery Verification Certificate*—(1) *Notification of requirement.* (i) Delivery Verification Certificates (OMB approval No. 0625-0005) are required by the Office of Export Licensing on a selective basis. They may be required for exports of commodities exported under a validated license to any of the country destinations listed in paragraph (b) of this section (and, in certain instances, to the People's Republic of China), including commodities not identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1) and commodities for which an exemption or exception to the Import Certificate requirement has been established in accordance with paragraph (d) or (e) of this section. Where verification of delivery is required, the words "Delivery Verification required, see attached Form ITA-648P" will be stamped on the face of the export license. In addition, Form ITA-648P, Notification of Delivery Certification Requirement, will be attached to the license.[2] Where the license is sent directy to an agent or freight forwarder of the licensee, such agent or freight forwarder is responsible for notifying the licensee immediately in writing that a Delivery Verification Certificate is required. (See Supplement No. 1 to Part 775 for list of addresses where importers may obtain Delivery Verification Certificates.)

(ii) The Delivery Verification Certificate requirement for a particular export transaction is cancelled automatically if, subsequent to the issuance of a license, (*a*) the code letter "A" is replaced by another code letter for the commodity involved, and (*b*) the exporter returns the original copy of Form DIB-684P or IA-863 to the Office of Export Licensing with a statement that the code letter "A" has been replaced by another code letter.

(2) *Submission to the Office of Export Licensing.* When notified to do so by the Office of Export Licensing, any person issued a license covering a shipment within the scope of this section shall:

(i) Transmit to the foreign importer a written request for a Delivery Verification Certificate at the time of making each shipment under the license (whenever possible, this request should be submitted together with the related bill of lading or air waybill). The request must include the number of the International Import Certificate for the transaction referred to in Form DIB-648P or IA-863, and notify the foreign importer that this same International Import Certificate number should be shown on the Delivery Verification Certificate;

(ii) Obtain from the named importer a Delivery Verification Certificate that has been issued to the importer by his government covering the commodities described on the export license, or as much thereof (when complete shipment against the license will not be made) as the licensee has shipped; and

(iii) Send the original copy of the Delivery Verification Certificate to the Office of Export Licensing within a reasonable time after the last shipment has been made against the license. If verification of delivery is required for commodities covered by a license against which partial shipments have been made, the licensee shall obtain the required verification of delivery for each partial shipment. When all the Delivery Verification Certificates have been received, they shall be forwarded in one package to the Office of Export Licensing.

(3) *Inability to obtain Delivery Verification Certificates.* If an exporter is unable to obtain the required Delivery Verification Certificate from his importer, he shall promptly notify the Office of Export Licensing and, upon request, make available to that office

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[2] In certain instances, the licensee may be requested to submit a Delivery Verification Certificate under alternative procedures.

all information and records, including correspondence, regarding his attempt to obtain the required document.

[40 FR 59325, Dec. 23, 1975. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 775.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 46508, Nov. 5, 1990, § 775.3, was amended by revising paragraph (a)(1) and paragraph (g); by revising the heading of paragraph (h) and the first sentence of paragraph (h)(1); and by revising paragraphs (h)(3) through (5), effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.3 International import certificate and delivery verification certificate.

* * * * *

(a) *Scope*—(1) *International Import Certificate.* An International Import Certificate (IC) is an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the commodities covered by the IC. The governments that issue IC's are listed in § 775.3(b). The IC is obtained by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The Office of Export Licensing requires an IC in support of an individual export license application to export a commodity(ies) identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List to one of the destinations listed in § 775.3(b). The IC is not required if one of the exemptions in § 775.3(d) applies. An IC may also be required for transactions not involving an export from the United States. (See § 768.2(a)(8).)

* * * * *

(g) *Submission of International Import Certificate*—(1) *Single Transaction Certificate.* (i) The applicant shall attach to his license application covering a proposed export the original International Import Certificate, bearing the official authentication of the government authorities in the importing country, issued to the named importer or his agent and covering the commodity(ies) described in the application. A reproduced copy (photocopy or other type) of the International Import Certificate will not be accepted by the Office of Export Licensing.

(ii) Where the single transaction International Import Certificate covers commodities for which more than one license a cation is submitted, the original Import tificate should be attached to the first application, and each subsequent app tion should show the following certific in the "Additional Information" space o an attachment:

> I (We) certify that the quantities of modities shown on all export licenses b on the (name of country) Internati Import Certificate Number ——, w added to the quantities shown on all a tional applications pending in the Offic Export Licensing based on the same Imp Certificate, including the present appl tion, do not total more than the quanti shown on that Import Certificate. T Import Certificate was submitted in supp of application number (*insert case num or, if case number is unknown, the ap cant's reference number; date of submiss of the application to which the Import C tificate was attached; and Export Cont Commodity Numbers and process Number shown on that application*).

Failure to supply the case number or oth identifying information may result in de in processing the application.

(2) *Multiple transactions certificat* multiple transactions International Imp Certificate is an officially authenticat original of an Import Certificate that cov more than one proposed transaction. If multiple transactions Import Certifica specifies the amount of the commodities (i terms of either quantity or value), all expo licenses, including those covering a commo ity valued at less than $5,000 will be charg against the amount specified. The applica should attach the original multiple transa tions Import Certificate, bearing the offici authentication of governmental authoriti in the importing country, to his first appli cation the Certificate is intended to suppor A reproduced copy (photocopy or othe type) of the Import Certificate is not a ceptable. On each subsequent applicatio submitted against that Certificate, one o the following certifications, as appropriat signed by the applicant, shall be inserted i the space entitled "Additional Informatio or on an attachment:

(i) If quantity or value is shown on th Certificate:

> I (We) certify that the quantities (value of commodities shown on all export license based on the (*name of country*) International Import Certificate Number ——, whe added to the quantities (values) shown o all additional applications pending in th Office of Export Licensing based on th same Import Certificate, including th present application, do not total more tha the quantities (values) shown on tha

Import Certificate. This Import Certificate was submitted in support of application number (*insert case number or, if case number is unknown, the applicant's reference number, date of submission of the application to which the Import Certificate was attached, and Export Control Commodity Numbers and Processing Number shown on that application*).

or

(ii) If quantity or value is not shown on the Certificate:

I (We) certify that this application is supported by the (*name of country*) multiple transactions International Import Certificate Number ——, which was submitted in support of application number (*insert case number or, if case number is unknown, the applicant's reference number, date of submission of the application to which the Import Certificate License was attached, and Export Control Commodity Numbers and Processing Number shown on that application*).

(h) *Requirements applicable to both Single and Multiple Transactions Import Certificates*—(1) *Parties named on Import Certificate.* The International Import Certificate may be accepted if made out to either the ultimate consignee or the purchaser if they are different parties located in the same country. * * *

* * * * *

(3) *Validity period.* The International Import Certificate must be submitted to the Office of Export Licensing within the period shown thereon, which in no case will exceed six months from the date it is issued by the foreign government. In addition, any license application supported by such Certificate must be submitted within 12 months from the date the Certificate was initially submitted to the Office of Export Licensing. The expiration of an Import Certificate will in no way affect the validity period of the resultant export license(s).

(4) *Triangular transactions.* Whenever an International Import Certificate bearing a triangular symbol is submitted to the Office of Export Licensing, the U.S. exporter shall advise the Office of Export Licensing of all parties to the transaction, including parties located outside the country that issued the Import Certificate. If the importer objects to giving this information to the U.S. exporter, he may submit it directly to the Office of Export Licensing through a U.S. Foreign Service post or in a sealed envelope to the exporter, marked "To be opened by the Office of Export Licensing only."

(5) *Reexports.* Submission of an International Import Certificate does not relieve the parties to the transaction from compliance with the reexport provisions of Part 774.

* * * * *

§ 775.4 Swiss Blue Import Certificate.

(a) *Requirement*—(1) *General.* A license application for export of commodities to Switzerland or Liechtenstein, regardless of value, must be supported by a Swiss Blue Import Certificate. This certificate is issued to the importer by the Swiss Federal Department of Public Economy, Division of Commerce, Import and Export Control, covering the proposed export from the United States.

(2) *Retention of certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Swiss Blue Import Certificate issued in support of any license application for export to Switzerland or Liechtenstein. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Swiss Blue Import Certificate on all export license applications support by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* The certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, the following certification:

> I (We) certify that the quantities of commodities shown on all export licenses based on the Swiss Blue Import Certificate No. ————, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Certificate, including the present application, do not total more than the quantities shown on that Certificate. This Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Swiss Blue Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

(b) *Exemptions*—(1) *Shipments to government agencies.* A license application to export commodities to a Swiss or Liechtenstein Government agency, as defined in § 775.2(b)(3), is exempted from the Swiss Blue Import Certificate requirement if the Government agency actually placed the order with the applicant and will accept delivery of the export.

(2) *Approved Form ITA-686.* A license application to export commodities to Switzerland or Liechtenstein is exempted from the Import Certificate requirement if such license application is supported by Form ITA-686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

(3) *Temporary exports.* A license application to export commodities for temporary exhibition, demonstration, or testing purposes in Switzerland or Liechtenstein (see § 772.8(c)) does not require a Swiss Blue Import Certificate.

(c) *Exceptions.* An applicant for an export license subject to the requirement for a Swiss Blue Import Certificate in accordance with the provisions of § 775.4(a) of this part may request an exception to this requirement. Favorable consideration of a request for exception generally will be given where the Swiss Blue Import Certificate requirement:

(1) Imposes an undue hardship on the applicant and/or ultimate consignee (e.g., the Swiss Government refuses to issue an Import Certificate and such refusal constitutes discrimination against the U.S. exporter);

(2) Cannot be complied with (e.g. the commodities will be held in a foreign trade zone or bonded warehouse in Switzerland or Liechtenstein for subsequent distribution in one or more countries); or

(3) Is not actually applicable to the transaction (e.g., the commodities will not be imported for consumption into Switzerland or Liechtenstein).

An exception will not be granted contrary to the objectives of the U.S. export control program. The procedure to follow in requesting an exception is set forth in § 775.9(g).

[40 FR 59325, Dec. 23, 1975, as amended at 45 FR 45898, July 8, 1980; 50 FR 52902, Dec. 27, 1985; 51 FR 10366, Mar. 26, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 46509, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46509, Nov. 5, 1990, § 775.4, paragraph (a) was revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.4 Swiss Blue Import Certificate.

(a) *Requirement*—(1) *Submission of Certificate.* A license application for export of commodities to Switzerland or Liechtenstein, regardless of value, must be accompanied by the original Swiss Blue Import Certificate. This certificate is issued to the importer by the Swiss Federal Department of Public Economy, Division of Commerce, Import and Export Control, covering the proposed export from the United States. The certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the original Certificate shall be attached to the first such application. Each subsequent application shall include the following certification in the space entitled "Additional Information" or on an attachment:

> I (We) certify that the quantities of commodities shown on all export licenses based on the Swiss Blue Import Certificate No. ——, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Certificate, including the present application, do not total more than the quantities shown on that Certificate. This Certificate was submitted in support of application number (*insert case number or, if case number is unknown, the applicant's reference number, date of submission of application to which the Swiss Blue Import Certificate was attached, and Export Control Commodity Numbers and Processing Number shown on that application*).

* * * * *

§ 775.5 Yugoslav End-Use Certificate.

(a) *Requirements*—(1) *General.* A license application for export of commodities to Yugoslavia, regardless of value, must be supported by a Yugoslav End-Use Certificate issued to the Yugoslav importer by the Yugoslav Chamber of Economy in Belgrade covering the proposed export or reexport.[3] The applicant must obtain the original Certificate from the Yugoslav importer along with a supplement on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use, and end-user information.

(2) *Retention of certificate in applicant's files.*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Yugoslav End-Use Certificate and supplement issued in support of any license application for export to Yugoslavia. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated originals as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Yugoslav End-Use Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.*—The End-Use Certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against the Certificate, the following certification:

> I (We) certify that the quantities of commodities shown on all export licenses (reexport authorizations) based on the Yugoslav End-Use Certificate No. ————, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same End-Use Certificate, including the present application, do not toal more than the quantities shown on that certificate. This End-Use Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the End-Use Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

(b) *Exemptions*—(1) *Shipments to government agencies.* A license application to export commodities to a Yugoslav Government agency, as defined in § 775.2(b)(3), is exempted from the Yugoslav End-Use Certificate requirement if the government agency actually placed the order with the applicant and will accept delivery of the export.

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[3] Foreign consignees may obtain End-Use Certificates from the Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade.

(2) *Approved Form ITA-686.* A license application to export commodities to Yugoslavia is exempted from the requirement for a Yugoslav End-Use Certificate if such application is supported by Form ITA-686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

(3) *Temporary exports.* A license application to export commodities for temporary exhibition, demonstration, or testing purposes in Yugoslavia (see § 772.8(c)) does not require an End-Use Certificate.

(c) *Exceptions.* The Office of Export Licensing will consider the granting of an exception to the Yugoslav End-Use Certificate requirement where the ultimate consignee has been unable to obtain the Certificate and the granting of an exception will not be contrary to the objectives of the U.S. export control program. The Office of Export Licensing may also waive the End-Use Certificate requirement where refusal by the Yugoslav Government to issue the Certificate discriminates against the U.S. exporter, or for any other valid reason of similar importance. The procedure to follow in requesting an exception is set forth in § 775.9(g).

[40 FR 59325, Dec. 23, 1975, as amended at 42 FR 36993, July 19, 1977; 45 FR 45898, July 8, 1980; 50 FR 52902, Dec. 27, 1985; 51 FR 10366, Mar. 26, 1986; 51 FR 12839, Apr. 16, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 46509, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46509, Nov. 5, 1990, § 775.5(a) was revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.5 Yugoslav End-Use Certificate.

(a) *Requirements.* A license application to export or reexport commodities to Yugoslavia, regardless of value, must be accompanied by the original End-Use Certificate issued to the Yugoslav importer by the Yugoslav Chamber of Economy in Belgrade covering the proposed export or reexp
In addition, a supplement on the letter
of the Yugoslav Chamber of Eco
giving the End-Use Certificate number
end-use and end-user information, mu
submitted to the Office of Export Lice
as part of the End-Use Certificate. The
use certificate may cover more than
purchase order and more than one com
ity. Where the Certificate includes com
ities for which more than one license a
cation will be submitted, the original of
Certificate shall be attached to the
such application. Each subsequent app
tion shall include the following certifica
in the space entitled "Additional Infor
tion" or on an Attachment:

I (We) certify that the quantities of c
modities shown on all export licenses (re
port authorizations) based on the Yugo
End-Use Certificate No. ——, when ad
to the quantities shown on all additional
plications pending in the Office of Exp
Licensing based on the same End-Use C
tificate, including the present applicati
do not total more than the quantities sho
on that certificate. This End-Use Certific
was submitted in support of applicati
number (*insert case number or, if c*
number is unknown, the applicant's ref
ence number, date of submission of the a
plication to which the End-Use Certific
was attached, and Export Control Commo
ity Numbers and Processing Number on th
application).

* * * * *

§ 775.6 People's Republic of China End-User Certificate.

(a) *Requirements.* A license applica-
tion to export or reexport to the Peo-
ple's Republic of China (PRC) com-
modities identified by the code letter
"A" on the Commodity Control Lis
and valued at $5,000 or more must be
accompanied by the original PRC End-
User Certificate issued to the PRC im-
porter by the Ministry of Foreign Eco-
nomic Relations and Trade
(MOFERT) Technology Import and
Export Department in Beijing. This
agency certifies that all items identi-
fied by the code letter "A" exported to
the PRC are for use in the PRC and
will not be reexported to a third coun-
try.

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[3] Foreign consignees may obtain End-Us Certificates from the Yugoslav Chamber o Economy, Knez Mihailova 10, Belgrade.

(b) *Information included on the End-User Certificate.* The following information shall be included on the PRC End-User Certificate:

(1) Title of contract and contract number (optional);

(2) Names of importer and exporter;

(3) End-user and end-use;

(4) Commodity description, quantity and dollar value; and

(5) Signature of the importer and date.

(c) *Substitution of Form ITA-629P.* A Form ITA-629P (Statement by Ultimate Consignee and Purchaser) may be substituted for the PRC End-User Certificate under the following conditions:

(1) The commodity to be exported is described in an Advisory Note for Country Groups QWY on the Commodity Control List;

(2) The commodity to be exported is for demonstration only and will be returned to the U.S.;

(3) The commodity (i.e., replacement parts or sub-assemblies, not tools or test instruments) to be exported is for servicing previously exported equipment and is valued at $75,000 or less; or

(4) The Chinese do not issue an End-User Certificate because the end-user is not a Chinese entity.

The completed End-User Certificate shall be signed by a deputy director of the Technology Import and Export Department of MOFERT and have MOFERT's seal affixed to it.

[50 FR 52902, Dec. 27, 1985, as amended at 52 FR 28544, July 31, 1987; 52 FR 44099, Nov. 18, 1987; 53 FR 27158, July 19, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 775.7 Indian Import Certificate.

(a) *Requirement*—(1) *General.* A license application to export or reexport commodities to India, regardless of consignee, must be supported by a Government of India (GOI)-certified copy of the Indian Import Certificate. The Import Certificate, inter alia, places certain obligations on the Indian importer against reexport or transfer of the commodities. The Import Certificate requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL), and to those commodities identified by the code letter "B" that include "National security" in the Reason for Control portion of the CCL entry.

(i) *Responsibility of Indian importer.* The Indian importer is responsible for determining the appropriate GOI issuing agency. The issuing agencies include:

(A) For small scale industries and entities, and those not elsewhere specified, Office of Chief Controller of Imports and Exports;

(B) For the "organized" sector, except for computers and related equipment, Directorate General of Technical Development;

(C) For Defense organizations, Ministry of Defense; and

(D) For computers and related electronic items, Department of Electronics.

In addition, any of the agencies listed above has the authority to instruct the Embassy of India in Washington, DC to issue the Import Certificate on its behalf.

(ii) *Responsibility of the U.S. exporter or the reexporter.* The U.S. exporter, and where appropriate, the reexporter, should inform the Indian customer that:

(A) The GOI-certified copy of the Import Certificate is required documentation in order to apply for a U.S. export license or reexport authorization; and

(B) The Indian customer should limit the request for issuance of the Indian Import Certificate solely to those commodities that are subject to this Import Certificate procedure, i.e., commodities under national security control.

The exporter should clearly identify those commodities covered by this procedure. For example, where the Indian order is for a mixture of commodities, some requiring an Import Certificate under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G-DEST, the request for the certified copy of the Indian Import Certificate should be limited to cover only those commodities that are subject to the Import Certificate requirement as described in paragraph (a)(1) of this section.

(2) *Retention of Indian Import Certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Indian Import Certificate issued in support of any license application for export to India. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Indian Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* Where the Indian Import Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Import Certificate, the following certification:

> I (We) certify that the quantities of commodities shown on all export licenses based on the Indian Import Certificate No.________ when added to the quantities shown on all additional applications pending in the Office of Export Licensing b on the same Import Certificate, inclu the present application and any license ready issued, do not total more than quantities shown on the Import Certific This Import Certificate was obtained in s port of application number ________ (in *application number, or, if applicat number is unknown, the applicant's re ence number, date of submission of the a plication supported by the Indian Imp Certificate, and the Export Control Co modity Numbers and Processing Co shown on that application.*

(b) *Exemptions*—(1) *Shipments w a total value of less than $5,000.* A Indian Import Certificate is not r quired for a license application t export commodities classified in single entry on the Commodity Con trol List, the total value of which, shown on the export order, is less tha $5,000. However, if a lesser transactio is part of a larger export order that i subject to this Import Certificate pro cedure, the Import Certificate shall be retained in the applicant's files in sup port of the application and cited in certification as required by paragrap (a)(3) of this section. In limited cir cumstances, the Office of Export Li censing may require the applicant to obtain an Indian Import Certificate for an order valued under $5,000. In such an event, the exporter will be specifically notified by the Office of Export Licensing.

(2) *Approved Form ITA-686P.* A li cense application to export commod ities to India is exempted from this Import Certificate requirement if such license application is supported by Form ITA-686P, Statement by For eign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

(3) *Temporary export.* An Indian Import Certificate is not required for a license application to export commod ities for temporary exhibition, demon stration, or testing purposes in India (see § 772.8(c) of this subchapter).

(4) *Applications for Special License.* An Indian Import Certificate is not re quired to support an application for a special license as described in part 773 of this subchapter, that is supported by a Form BXA-6052P or BXA-6026P.

(c) *Exceptions.* The Office of Export Licensing will consider the granting of an exception to the requirement for an Indian Import Certificate in accordance with the provisions of this section where the requirements cannot be met due to circumstances beyond the applicant's control. An exception will not be granted contrary to the objectives of the U.S. export control program.

(d) *Delivery Verifications.* The Office of Export Licensing will on a selective basis require Delivery Verification documents for shipments to India that are subject to the Import Certificate procedure. The exporter will usually be notified of the Delivery Verification requirement at the time of issuance of the export license. (See § 775.3(i) for background information on the Delivery Verification procedure.)

[51 FR 10367, Mar. 26, 1986, as amended at 53 FR 24438, June 29, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 46510, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46510, Nov. 5, 1990, § 775.7 was amended by revising paragraph (a) and paragraphs (b) (1), (3), and (4), effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.7 Indian Import Certificate.

(a) *Requirement.* A license application to export or reexport commodities to India, regardless of consignee, generally must be accompanied by an original Government of India (GOI) Indian Import Certificate. The Import Certificate, inter alia, places certain obligations on the Indian importer against reexport or transfer of commodities. The Import Certificate requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL) and to those commodities identified by the code letter "B" that include "national security" in the *Reason for Control* paragraph of the CCL entry. Four GOI agencies have the authority to issue the Indian Import Certificate. The Indian importer is responsible for determining the appropriate GOI issuing agency. The issuing agencies include:

(1) For small scale industries and entities, and those not elsewhere specified, Office of Chief Controller of Imports and Exports;

(2) For the "organized" sector, except for computers and related equipment, Directorate General of Technical Development;

(3) For Defense organizations, Ministry of Defense; and

(4) For computers and related electronic items, Department of Electronics.

In addition, any of the agencies listed above may instruct the Embassy of India in Washington, DC, to issue the Import Certificate on its behalf. The U.S. exporter and, where appropriate the reexporter, should tell the Indian customer that the GOI Import Certificate is required documentation when applying for a U.S. export license or reexport authorization and limit the customer's request to those commodities subject to this Import Certificate procedure, *i.e.*, commodities under national security control. The exporter should clearly state which commodities are covered. For example, where the Indian order is for a variety of commodities (some requiring an Import Certificate under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G-DEST), the request for the certified copy of the Indian Import Certificate should be limited to cover those commodities that are subject to the Import Certificate requirement, as described above. Where the Import Certificate includes commodities for which more than one license application will be submitted, the Import Certificate must be attached to the first such application. Each subsequent application must include the following certification in the space entitled "Additional Information" or on an attachment:

I (We) certify that the quantities of commodities shown on all export licenses based on Indian Import Certificate No. ______ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application and any license already issued, do not total more than the quantities shown on the Import Certificate. This Import Certificate was submitted in support of application number ______ (insert case number, or, if case number is unknown, the applicant's reference number, date of submission of application to which the Indian Import Certificate was attached, and the Export Control Commodity Number and Processing Code shown on that application).

(b) *Exemptions*—(1) *Shipments with a total value of less than $5,000.* An Indian Import Certificate need not be submitted to support a license application to export commodities classified in a single entry on the Commodity Control List, the total value of which, as shown on the export order, is less than $5,000. However, if a lesser transaction is part of a larger export order that is subject to this Import Certificate procedure, such Import Certificate shall be submitted in support of the application, or cited in a certification as described at the end of paragraph (a) of this section. In limited circumstances the Office of Export Licensing may request an Import Certificate for an order valued under $5,000. In such event, the exporter will be so notified specifically by the Office of Export Licensing.

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(3) *Temporary export.* An Indian Import Certificate need not be submitted to support a license application to export commodities for temporary exhibition, demonstration, or testing purposes in India (see § 772.8(c)).

(4) *Applications for special licenses.* An Indian Import Certificate need not be submitted to support an application for a special license, as described in Part 773, that is supported by a Form ITA-6052P or ITA-6026P.

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§ 775.8 Documents accompanying applications.

(a) *Copies in lieu of originals.* Documents required by this part 775 to accompany an application for an individual or other validated license must be submitted in the original; copies will not be accepted. A document submitted in support of an application for an individual or other validated license will not be returned to the applicant or the applicant's agent, except when the application is returned without action. The original of a document, other than one required by this part 775, which an exporter may subsequently need, does not have to be submitted unless specifically required by the provisions of another section of the Export Administration Regulations. A copy of an original document is acceptable. An individual certification of a copy as an original is not required by the Office of Export Licensing. In lieu thereof, by signing the application, the applicant is deemed to certify and represent that any copy of a document submitted with the application, or at any time before or after it is filed, is a true copy of the original document. The applicant's signature also certifies and represents that the information contained in such document is true, correct, and complete to the best of the applicant's knowledge and belief.

(b) *Availability of original.* The Bureau of Export Administration may demand the original of any docum retained in the applicant's files a quired by this part 775. Such orig must be kept and made available inspection in accordance with the p visions of § 787.13 of this subchapt To ensure compliance with this r ordkeeping requirement, the Office Export Licensing will require app cants, on a random basis, to subm specific supporting documents th have been retained on file.

(c) *Identification of document.* A document that is submitted separate from the application must be ident fied clearly as part of that applicatio by the following statement:

> This document is submitted in suppor application number (*insert case number o if case number is unknown, the applicant reference number; date of submission of th application to which the document is relat ed and Export Control Commodity Number and Processing Number shown on the appli cation*).

Unless a document filed separately from the license application is so identified, it will not be accepted by the Office of Export Licensing.

(d) *Number of copies required.* A document submitted with an application that will ultimately become a part of the license, such as a list of consignees, must be submitted in duplicate. A copy of such document will become a part of the license, if issued, and must remain affixed thereto. Only one copy is required of a document that will not become a part of the license; for example, evidence of an order.

[40 FR 52935, Dec. 23, 1975. Redesignated at 50 FR 52901, Dec. 27, 1985, and further redesignated at 51 FR 10366, Mar. 26, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 55 FR 46511, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46511 Nov. 5, 1990, § 775.8, paragraphs (a) and (b) were revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.8 Documents accompanying applications.

(a) *Copies in lieu of originals.* A document submitted in support of an application for an individual or other validated license will not be returned to the applicant or his agent, except when the application is returned without action or this part provides for the return of an unused or partially used International Import Certificate, Swis

Blue Import Certificate, or Yugoslav End-Use Certificate. An original document, other than one required by this part, which an exporter may subsequently have need for, does not have to be submitted unless it is specifically required by the provisions of another section of the Export Administration Regulations. In lieu thereof, a photocopy or other copy of an original document is acceptable. An individual certification of a copy of an original document is not required by the Office of Export Licensing. By signing the application, the applicant certifies and represents that any copy of a document submitted with the application, or at any time before or after it is filed, is a true copy of the original document. His signature also certifies and represents that the information contained in such document is true, correct, and complete to the best of his knowledge and belief.

(b) *Availability of original.* The Office of Export Licensing may demand the original of any copy of a document submitted in support of a license application. Such original must be kept and made available for inspection in accordance with the provisions of § 787.13. However, after a year from the beginning of the prescribed detention period, a reproduction of the original document may be substituted.

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§ 775.9 Special provisions.

The following special provisions apply as indicated to Consignee/Purchaser Statements, International Import Certificates, Delivery Verification Certificates, Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-User Certificates and Indian Import Certificates, and other documents submitted in support of export license applications.

(a) *Coded terms and translation requirements.* All abbreviations, coded terms, or other expressions on consignee/purchaser statements, International Import Certificates, Delivery Verification Certificates, Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-User Certificates and Indian Import Certificates, and other documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a foreign language must be accompanied by an attachment giving an accurate translation, either made by a translating service or certified by the applicant to be correct. Exporters may provide foreign customers with Form DIB-629P translated into the customers' language but the Office of Export Licensing will not provide foreign language copies. Explanations or translations should not be entered on the documents themselves, as such action constitutes an alteration of the document (see § 775.2(g) of this part on alteration of a consignee/purchaser statement).

(b) *Grace period*—(*1*) *Consignee/purchaser statement.* Whenever the requirement for a consignee/purchaser statement for any commodity is imposed or extended by virtue of one of the following—

(i) The addition of a country group(s) to the paragraph in any entry on the Commodity Control List titled "Validated License Required"; or

(ii) The replacement of the Code letter "A" following the Export Control Commodity Number with another code letter; or

(iii) The removal of a commodity from eligibility for export under a special license described in Part 773, when the exporter holds such as special license and has been exporting the commodity under that special license;

The application for license need not conform to the requirements of § 775.2 for a period of 45 days after the date that the commodity becomes subject to the new requirement. In lieu thereof, applications filed during the 45 day grace period shall be accompanied by any evidence available to the applicant that will support his representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between the exporter and ultimate consignee, or other documents received from the ultimate consignee.

(2) *International Import Certificate and the Indian Import Certificates.* Whenever the requirement for an International Import Certificate or an Indian Import Certificate for any commodity is imposed or extended by virtue of one of the following—

(i) The replacement of the code letter following the Export Control Commodity Number with the code letter "A" (in the case of India, this applies also to replacing the code letter with the code letter "B", where the commodity is controlled for national security reasons); or

(ii) The removal of a commodity identified by the code letter "A" from eligibility for export under a special license described in Part 773, when the exporter holds such a special license and had been exporting the commodity under that special license. (In the case of India, this applies also to a commodity identified by the code letter "B" and controlled for national security purposes);

The application for license need not conform to the requirements of § 775.3 or 775.7, as appropriate, for a period of 45 days after the date that the commodity becomes subject to the new requirement.

(3) *Swiss Blue Import Certificates, Yugoslav End-Use Certificates or People's Republic of China End-User Certificates.* Whenever the submission requirement for a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate is imposed or extended to any commodity on the Commodity Control List by the addition of Country Group V to the "Validated License Required" paragraph in the applicable entry on the Commodity Control List, a license application to export such commodity need not conform to the submission requirement for 45 days from the date such commodity becomes subject to the requirement.

(c) *Applicant's responsibility for full disclosure.* In obtaining a Consignee/Purchaser Statement, International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate, the applicant is not relieved of his responsibility for full disclosure of any other information concerning the ultimate destination and end use of which he has knowledge or belief, even if inconsistent with the representations set forth in the above-mentioned documents. In accordance with the provisions of §§ 772.6(g) 787.5(c), the applicant shall pro notify the Office of Export Lice of any change in the facts set for the document that comes to his a tion subsequent to the issuance da the document.

(d) *Supporting document as a li ing factor.* The Office of Expor censing reserves the right in al spects to determine to what ex any license will be issued cove commodities for which a foreign ernment has issued a document quired by this Part 775. Gener commodities licensed by the Offic Export Licensing on the basis of do value will not be licensed in exce the dollar value shown on the relev document issued by the foreign ernment, and commodities licensed the basis of units of measure will be licensed in excess of the u shown on such document. The Off of Export Licensing will not seek undertake to give consideration to r ommendations from the foreign ernment as to the U.S. exporter wh license application should be proved. A supporting document issu by a foreign government will be o one of the considerations upon wh the Office of Export Licensing base its licensing action, since quot end uses, and other considerations a important factors in export licensing.

(e) *Request for return of certificat* A U.S. exporter may be requested by foreign importer to return an unuse or partially used International Impor Certificate, Swiss Blue Import Certifi cate, Yugoslav End-Use Certificate People's Republic of China End-User Certificate or Indian Import Certifi cate. To meet such requests, exporters should adhere to the following proce dures:

(1) *Certificate on file in the Office of Export Licensing.* In order to reques the return of a People's Republic of China End-User Certificate or an Certificate that was submitted in sup port of an application to export a su percomputer, the exporter must send a letter containing the request ad dressed to:

Office of Export Licensing, P.O. Box
273, Washington, DC 20044

The letter should include the name and address of the importer, the case number(s) to which the Certificate applies, the Certificate number, and, when the Certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the Certificate will not be used in connection with another license application. When the U.S. exporter does not intend to make any additional shipments under a license covered by the Certificate or is holding an expired license covered by the Certificate, this fact should be mentioned in the letter requesting the return of the Certificate. The Office of Export Licensing will place an appropriate notation on the Certificate before returning it to the exporter.

(2) *Certificates retained in the exporter's files.* Notwithstanding the provisions of this part 775 regarding the 5 year period for retaining original supporting documents in the applicant's files, a U.S. exporter may return an unused or partially used Certificate at the request of a foreign importer provided that the exporter adheres to the procedures listed in paragraph (e)(2)(i) and (ii) of this section.

(i) The exporter must submit the original Certificate—accompanied by a letter of explanation and a copy of each license (Form BXA-628) covered by the Certificate, including a copy of the reverse side of the license showing the "record of shipments"—to:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The U.S. exporter must include the following information in the letter:

(A) A statement citing the foreign importer's request for the return of the Certificate;

(B) The license number(s) that have been issued against the Certificate (including expired and unexpired licenses); and

(C) A statement that the Certificate will not be used in connection with another license application. (This statement is necessary only when the Certificate covers a quantity greater than the total quantity identified on the license applications submitted against it.)

(ii) The exporter must make a copy of the Certificate after the original has been returned by the Office of Export Licensing and before the original is sent to the foreign importer. This copy must show all the information contained on the officially authenticated original, including any notation made on the Certificate by the Office of Export Licensing. The U.S. exporter must retain this copy on file in accordance with the recordkeeping provisions of this part 775.

(f) *Request for amendment of export license—.*[4] (1) *Change in consignee or purchaser.* The applicant must obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of the new Statement or Certificate must be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if—

(A) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(B) The commodity described on the license is a supercomputer; or

(ii) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(2) *Increase in quantity*—(i) *Increase not supported by existing Statement or*

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[4] Section 772.11(l) of this subchapter contains other provisions applicable to amendments of licenses covered by a consignee/purchaser statement.

Certificate obtained in support of license application. The applicant shall obtain a new Statement by Ultimate Consignee or Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or with the Office of Export Licensing. The original copy of the new Statement or Certificate shall be—

(A) Submitted to the Office of Export Licensing, along with the amendment request, if—

(*1*) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(*2*) The commodity described on the license is a supercomputer; or

(b) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(ii) *Increase supported by existing Statement or Certificate obtained in support of license application.*—(A) If a proposed quantitative amendment is in accordance with the single transaction Statement by Ultimate Consignee and Purchaser or Certificate obtained by the applicant in support of the original export license application, the amendment request shall include the following certification as appropriate:

I (We) certify that this request for amendment of export license number ________, if granted, will not exceed the total quantity covered by the Statement by Ultimate Consignee and Purchaser against which this export license was issued.

or

I (We) certify that this request for amendment of export license number ________, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, Swiss B Import Certificate, Yugoslav End-Use C tificate, People's Republic of China E User Certificate, or Indian Import Certi cate number ________.

(B) Where the export license based on a multiple transactions Stat ment by Ultimate Consignee and Pu chaser, an additional Statement is no required from the consignee or pu chaser to support a proposed licens amendment for an increase in quanti ty. In lieu thereof, the following certi fication shall be placed on the amend ment request:

I (We) certify that the license listed abov is supported by a Statement by Ultimate Consignee and Purchaser.

(g) *Request for exception*—(1) *Types of requests.* A request for exception to a requirement for obtaining an International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate,[5] may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

(i) The single transaction exception relates to a single export order and, if granted, will cover the application(s) that the exporter submits to ship the single export order; or

(ii) The multiple transactions exception relates to multiple export orders and, if granted, will cover all applications submitted by the exporter during all or any part of the period ending no later than June 30 of the year following the year during which the request is submitted, unless an earlier termination date is requested.

(2) *How to submit request.* (i) The request for exception should be submitted with the application to which it relates. Where the request relates to more than one application, it should be submitted with the first application and referred to in the "Additional Information" space on any subsequent application.

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[5] See § 775.2(c) for exceptions to the consignee/purchaser statement requirement where applicant is unable to obtain the statement.

(ii) Each request for exception shall be by letter in duplicate, addressed to: Office of Export Licensing, P.O. Box 273, Washington, D.C. 20044. It shall be accompanied by a Statement of Ultimate Consignee and Purchaser bearing the original signature(s) of the parties identified thereon, unless such statement is already on file in the Office of Export Licensing or the applicant has the statement on file in accordance with § 775.2.

(iii) As a minimum, the letter request shall include:

(A) Name and address of ultimate consignee;

(B) Name and address of purchaser, if different from ultimate consignee;

(C) Location of foreign trade zone or bonded warehouse if the commodities will be exported to a foreign trade zone or bonded warehouse;

(D) Type of request, i.e., whether for a single transaction or multiple transactions;

(E) Full explanation of the reason(s) for requesting the exception;

(F) Nature and duration of the business relationship between the applicant and importer shown on the license application;

(G) Whether the exporter has previously submitted to the Office of Export Licensing or retained on file, in accordance with § 775.2, a Certificate issued in the name of the importer and a listing of the case number(s) to which the certificate(s) applied;

(H) Whether a Statement by Ultimate Consignee and Purchaser is on file with the Office of Export Licensing or in the applicant's files, in accordance with § 775.2;

(I) Requested date of expiration if a multiple transactions exception is requested and the exporter wishes the exceptin period to expire before June 30 of the next year; and

(J) Any other facts to justify granting an exception.

(3) Action by Office of Export Licensing.

(i) *Single transaction request.* Where a single transaction is involved, the Office of Export Licensing will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related application is approved, the issuance of the export license will serve as an automatic notice to the exporter that the exception is also approved. However, if any restrictions are placed on the approval or if the request is disapproved, the Office of Export Licensing will advise the exporter by letter.

(ii) *Multiple transactions request.* Where multiple transactions are involved, the Office of Export Licensing will advise the exporter by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that the Office of Export Licensing finds necessary to impose. In addition, a written acceptance of these conditions, or restrictions will be required from the parties to the transaction.

[40 FR 59325, Dec. 23, 1975. Redesignated at 50 FR 52902, Dec. 27, 1985. Further redesignated at 51 FR 10366, 10367; Mar. 26, 1986, and at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 775.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 55 FR 46511, 46512, Nov. 5, 1990, in § 775.9, the first sentence of paragraph (c) revised the phrase "In submitting" to read "In obtaining", paragraphs (e) and (f), the introductory text of paragraph (g)(1), paragraph (g)(2)(ii), and paragraphs (g)(2)(iii) (G) and (H) were revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 775.9 Special provisions.

* * * * *

(e) *Request for return of Certificates.* A U.S. exporter may be requested by his foreign importer to return an unused or partially used International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate. In such instances, the U.S. exporter should forward the Certificate to his importer as soon as he determines that the Certificate will not be used with a new or resubmitted license application or an appeal. To meet such requests, Certificates on file in the Office of Export Licensing will be returned to exporters in accordance with the following procedures:

(1) *Quantity on Certificate more than quantity on application.* When a Certificate covers a quantity in excess of the license

application(s) submitted against it, the Office of Export Licensing will retain the Certificate unless the exporter requests its return. Request the return of the Certificate in a letter addressed to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. Include in the letter the name and address of the importer, the case numbers to which the Certificate applies, the Certificate number, and a statement that the Certificate will not be used in connection with another license application. Before returning the Certificate, the Office of Export Licensing will stamp the Certificate to indicate that it may not be used against future applications.

(2) *Certificate and license application in same quantities but not licensed in full.* The Office of Export Licensing will usually return a Certificate to the U.S. exporter whenever a license application covers the same type and amount of the commodity as that shown on the Certificate but such application is rejected or approved in a reduced quantity. Appropriate notation will be placed on the Certificate by the Office of Export Licensing.

(3) *Quantities licensed but not shipped.* Where the U.S. exporter does not intend to ship all of the commodities for which a license has been issued and desires the return of the Certificate, he shall submit his request in writing as follows:

(i) *Unexpired export license.* If the license has not expired but no further shipment will be made, the written request for return of the Certificate shall be accompanied by the license. If a further shipment(s) is contemplated, the request for return of the Certificate should be accompanied by a request to amend the license to show the total quantity to be shipped against it. The amendment request must be submitted on Request for and Notice of Amendment Action, Form BXA-685P or IA-763. (See § 772.11 for regular amendment procedure.)

(ii) *Expired export license.* If the license has expired, the written request shall be accompanied by the license, or should indicate that the license has already been returned. Form BXA-685P or IA-763 need not be submitted. Appropriate notation will be placed on the Certificate by the Office of Export Licensing before it is returned to the applicant.

(f) *Request for amendment of Export License*—[4] (1) *Change in consignee or purchaser.* A new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav
End-Use Certificate, People's Republic
China End-User Certificate, or Ind
Import Certificate shall accompany a
quest for an amendment of an export
cense that proposes a change in the consi
ee or purchaser in the transaction named
the export license if the proposed amen
ment is not in accordance with the sta
ment or certificate previously submitted
the Office of Export Licensing.

(2) *Increase in quantity.* A new Stateme
by Ultimate Consignee and Purchaser, or
letter, wire, or cable from the ultimate co
signee and purchaser (if applicable) co
firming the change, or an appropriate
amended International Import Certificat
Swiss Blue Import Certificate, Yugosla
End-Use Certificate, People's Republic
China End-User Certificate, or India
Import Certificate shall accompany a r
quest for an amendment of an export
cense that proposes any increase in th
quantity set forth in the export license
the proposed amendment is not in accord
ance with a single transaction Statement b
Ultimate Consignee and Purchaser, or Cer
tificate previously submitted to the Offic
of Export Licensing. If a proposed quantita
tive amendment is in accordance with the
previously submitted single transaction
Statement by Ultimate Consignee and Pur-
chaser or Certificate, the amendment re-
quest shall include the following certification as appropriate:

> I (We) certify that this request for amendment of export license number——, if granted, will not exceed the total quantity covered by the Statement by Consignee and Purchaser against which this export license was issued.

or

> I (We) certify that this request for amendment of export license number——, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate) Number——.

Where the export license is based on a multiple transactions Statement by Ultimate Consignee and Purchaser, an additional Statement is not required from the consignee or purchaser to support a proposed license amendment for increase in quantity. In lieu thereof, the following certification shall be placed on the amendment request:

> I (We) certify that the license listed above is supported by a Statement by Ultimate Consignee and Purchaser.

(g) *Request for exception.* (1) A request for exception to a requirement for submission of an International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate [5], People's Republic of China End-Use Certificate, or Indian Import Certificate may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

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[4] Section 772.11(l) contains other provisions applicable to amendments of licenses covered by a consignee/purchaser statement.

* * * * *

(2) * * *

* * * * *

(ii) Each request for exception shall be by letter (OMB approval No. 0625-0006), in duplicate, addressed to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. It shall be accompanied by a Statement by Ultimate Consignee and Purchaser in accordance with § 775.2, unless such statement is already on file in the Office of Export Licensing.

(iii) * * *

* * * * *

(G) Whether the exporter has previously submitted to the Office of Export Licensing a Certificate issued in the name of the importer and a listing of the case number(s) to which the certificate(s) applied;

(H) Whether a Statement by Ultimate Consignee and Purchaser, in accordance with § 775.2, is on file with the Office of Export Licensing;

* * * * *

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

[See footnotes at end of table]

Country	IC/DV Authorities	System administered [2]
Australia	Director, Technology Transfer and Analysis, Defence Industry and Materiel Policy Division, Department of Defence, Russell Office F-1-46 Canberra, A.C.T. 2600.	IC/DV
Austria	Bundesministerium fur Handel Gewerbe und Industrie, Stubenring 1, Vienna 1010.	IC
	Bundesministerium fur Handel Gewerbe und Industrie, Landstr. Haupstr. 55-57, Vienna 1031.	DV
Belgium	Ministere des Affaires Economiques, Office Central des Contingents et Licenses, 24-26 Rue De Mot, Bruxelles-1040.	IC/DV
China, People's Republic of	Technology Import and Export Department: MOFERT, No. 2 Dong Chang An Street, Beijing, PRC, Telephone: 553031, Telex: 22478MFERTCN.	PRC End-User Certificate.
Denmark	Handelsministeriets Licenskontor, Montergade 21, Copenhagen K, IC/DV also issued by Danmarks Nationalbank, Holmens Kanal 17, Copenhagen K.	IC/DV
	Custom-houses	IC/DV
Finland	Hensingin Piiritullikamari, Kanavakatu 6 (or P.O. Box 166) 00161 Helsinki.	IC/DV
France	Ministere de l'Economie et des Finances, Direction General des Douanes et droits indirects, Division des Exchanges, Bureau E/4, 8, Rue de la Tour des Dames, Paris 9e.	IC/DV
Germany, Federal Republic of	Bundesamt fur gewerbliche Wirtschaft, 6000 Frankfurt/Main 1, Bockenheimer Landstr. 38, Postfach 3931.	IC/DV
Greece	Banque de Grece, Direction des Transactions Commerciales avec l'Etranger, Athens.	IC/DV
Hong Kong	Trade Department, Ocean Centre, Canton Road, Tsimshatsui, Kowloon, Hong Kong.	IC/DV
India	For small scale industries and entities, and those not elsewhere specified: Deputy Chief Controller of Imports and Exports, Udyog Bhawan, Maulana Azad Road New Delhi—110011.	Indian Import Certificate.
	For the "organized" sector, except for computers and related equipment: Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi—110011.	Indian Import Certificate.
	For Defense organizations:	Indian Import Certificate.

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[5] See § 775.2(c) for exceptions to a consignee/purchaser statement.

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]—Continued

[See footnotes at end of table]

Country	IC/DV Authorities	System administered[2]
	Defense Research and Development Organization, Room No. 224, "B" Wing Sena Bhawan, New Delhi—110011.	
	For computers and related electronic items:	
	Department of Electronics, Lok Nayak Bhawan, New Delhi—110003	Indian Import Certificate.
	On behalf of any of the above:	
	Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave NW., Washington, DC 20008.	Indian Import Certificate.
Ireland, Republic of	Department of Industry, Trade, Commerce and Tourism, Frederick House, South Frederick Street, Dublin 2.	IC/DV
Italy	Ministero del Commercio con l'Estero, Direzione Generale delle Importazionie delle Esportazioni, Div. III, Rome.	IC
	Dogana Italiana (of the town where the import takes place)	DV
Japan	Ministry of International Trade and Industry in Fukuoka, Hiroshima, Kanmon (Kitakyusyu-shi), Kobe, Nagoya, Osaka, Sapporo, Sendai, Shikoku (Takamatsu-shi), Shimizu, Tokyo, and Yokohama.	IC
	Japanese Customs Offices	DV
Korea:	Trade Administration Division, Trade Bureau, Ministry of Trade and Industry, Jungang-Dong, Kyonggi-Do, Building 3, Kwachon, Republic of Korea.	IC
	Republic of Korea Customs House	DV
Luxembourg	Office des Licences, Avenue de la Liberte, 10	IC/DV
Netherlands	Centrale Dienst voor In- en Uitvoer, Engelse Kamp 2, Groningen	IC/DV
Norway	Handelsdepartmentet, Direktoratet for Eksport-og-Importregulering Fr. Nansens plass 5, Oslo.	IC/DV
Pakistan	Chief Controller of Imports and Exports—5, Civic Center Islamabad, Pakistan.	IC
	Joint Science Advisor, Ministry of Science and Technology, Secretariat Block 'S', Islamabad, Pakistan.	DV
Portugal	Reparticao do Comercio Externo, Direccao-Geral do Comercio, Secretaria de Estado do Comercio, Ministerio da Economia, Lisbon.	IC/DV
Singapore	Controller of Imports and Exports, Trade Development Board, World Trade Centre, 1 Maritime Square, Telok Blangah Road, Singapore.	IC/DV
Spain	Secretary of State for Commerce, Paseo de la Cistellana 162, Madrid 28046.	IC/DV
Sweden	The Association of Swedish Chambers of Commerce and Industry, P.O. Box 16050, S–103 22, Stockholm Office: Vastra Tradgardsgatan 9.	IC/DV
Switzerland	Swiss Federal Department of Public Economy, Import and Export Division, Zieglerstrasse 30 CH–3003 Bern.	Swiss Blue Import Certificate.
Turkey	Ministry of Commerce, Department of Foreign Commerce, Ankara	IC
United Kingdom	Head Customs Office at the point of entry	DV
	Department of Trade and Industry, Export Licensing Branch, Sanctuary Building, 20 Great Smith St., London, SW1P 3D8.	IC
	H.M. Customs and Excise, Section 22, King's Beam House, Mark Lane, London, E.C.3.	DV
Yugoslavia	Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade	Yugoslav End-Use Certificate.
West Berlin	Der Senator fur Wirtschaft, Referat I b B (ZGSt), 1000 Berlin 62 (Schoneberg), Martin-Luther-Strasse 105.	IC/DV

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[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198 or at any U.S. Department of Commerce District Office (see listing on page ii under Commerce Office Addresses) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

[2] IC—Import Certificate and/or DV—Delivery Verification.

[40 FR 59325, Dec. 23, 1975, as amended at 48 FR 20044, May 4, 1983; 50 FR 52902, Dec. 27, 1985; 51 FR 22505, June 20, 1986; 52 FR 34213, Sept. 10, 1987; 52 FR 44103, Nov. 18, 1987; 53 FR 24439, June 29, 1988; 53 FR 25145, July 5, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 24889, June 12, 1989; 55 FR 10050, Mar. 19, 1990; 55 FR 35896, Sept. 4, 1990; 55 FR 36611, Sept. 6, 1990; 55 FR 38190, Sept. 17, 1990]

PART 776—SPECIAL COMMODITY POLICIES AND PROVISIONS

Sec.
776.1 Purpose.
776.2 [Reserved]
776.3 Horses for export by sea.
776.4 Servicing of equipment previously exported or reexported to Country Groups Q, W, and Y.
776.5 [Reserved]
776.6 Chemicals.
776.7 Machinery, equipment, and parts.
776.8 Aircraft and equipment, parts, accessories, and components therefor.
776.9 Ship stores, plane stores, supplies, and equipment.
776.10 Electronic computers and related equipment.
776.11 Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies, and specially designed software.
776.12 Parts, components, and materials incorporated abroad into foreign-made products.
776.13 Communications intercepting devices.
776.14 Crime control and detection commodities.
776.15 Donations of goods to meet basic human needs.
776.16 Regional stability commodities and equipment.
776.17 Robots, robot controllers, end-effectors, related vision systems, or related software.
776.18 Equipment and related technical data used in the development of missiles capable of delivering nuclear weapons.
776.19 Chemical and biological agents.

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 19, 1981; by Pub. L. 99-64 of July 12, 1985; and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

EDITORIAL NOTE: Part 376 was redesignated as Part 776 at 53 FR 37751, Sept. 28, 1988.

§ 776.1 Purpose.

The special requirements for specific commodities set forth in this part are in addition to or modify other requirements applicable to exports requiring validated licenses as set forth elsewhere in the Export Administration regulations.

[13th Gen. Rev. of Export Regs., 35 FR 9166, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.2 [Reserved]

§ 776.3 Horses for export by sea.

An application for a license to export horses by sea may not cover more than one consignment. In addition to the documentation required by part 775, a statement from the applicant certifying that no horse under consignment is being exported for the purpose of slaughter must be placed in the Additional Information section (item 15) of the Application for Export License (BXA Form-622P). The license will be granted only if the Department of Commerce, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter.

[55 FR 36272, Sept. 5, 1990]

§ 776.4 Servicing of equipment previously exported or reexported to Country Groups Q, W, and Y.

(a) *Scope.* A procedure is established under which a person or firm may apply for an export license or reexport authorization to export or reexport parts needed to service equipment previously exported or reexported to a destination in Country Group Q, W, or Y under a validated export license or reexport authorization.

(b) *Limitations.* The procedure described in this § 776.4 is limited as follows:

(1) Servicing may only be performed on those instruments or equipment that are specifically identified in the export license application or reexport request.

(2) Parts to be used in servicing are limited to those that are identical to the parts that constituted the instrument or equipment as it was originally licensed for export or reexport.

(3) When a new part is installed in or added to instruments or equipment, the identical replaced part must be removed from such instrument or equipment and destroyed or returned to the licensee or to a foreign-based service facility owned or controlled by the li-

censee and located in Country Group T or V.

(4) Parts may not be stored in Country Group Q, W, or Y for subsequent servicing. Requests for an exception to this limitation will be considered on a case-by-case basis.

(5) When the export or reexport of service kits, (*i.e.*, kits that include test instruments and/or a supply of replacement parts that might be needed to service the instrument or equipment) is authorized, such kits while in a destination in Country Group Q, W, or Y shall remain under the exclusive possession and control of an authorized Western representative of the person or firm to which the export or reexport authorization was granted.

(6) Servicing is limited to instruments and equipment in the possession of consignees to which the export or reexport of the instruments or equipment had been originally authorized by the Office of Export Licensing.

(c) *License application or reexport request.* The following provisions supplement the regular requirements for submitting an export license application or request for reexport authorization (see Parts 772 and 774).

(1) *Consignee in country of ultimate destination.* Where shipments are contemplated to be made to more than one ultimate consignee, insert the phrase "Various—see attached list" in Item 7 of Form BXA-622P or Item 5 of Form ITA-699P, as appropriate.

(2) [Reserved]

(3) *Quantity and value.* The quantity and value for each commodity listed on the export license application or request for reexport authorization shall be an estimate of the requirements for up to one year's supply of parts for all the consignees covered by the application or reexport request.

(4) *Supporting documentation.* The application or reexport request shall be accompanied by a listing of the name and address of each consignee to whom exports are contemplated and, for each such consignee, the commodity or commodities to be serviced by the parts covered by the application or reexport request. Form DIB-629P, Statement by Ultimate Consignee and Purchaser, will not be required to be submitted with the application, although the Office of Export Licensing may require such documentation, if in the review of the application or reexport request, it is determined to be necessary.

(5) *Certification.* The following certification shall be entered after the commodity description on Form ITA-622P or ITA-699P:

> I(We) certify that the limitations set forth in § 776.4(b) and any other conditions that may be imposed by the Office of Export Licensing in approving this application (request for reexport authorization) shall be strictly adhered to and that I(we) shall immediately discontinue exports (or reexports) so authorized and notify the Office of Export Licensing in writing where I(we) learn, or have reason to believe, that such limitations or conditions are being, or have been, ignored.

(d) *Reports.* (1) The U.S. exporter to whom a validated export license is issued pursuant to the provisions of this section shall prepare and submit, on a quarterly basis, a report of all exports made against the license during the preceding quarter. The report shall include, as a minimum:

(i) The export license number and expiration date;

(ii) A description of the instrument or equipment that was serviced;

(iii) The full name and address of the person or firm on whose premises the instrument or equipment was serviced;

(iv) A description, including the quantity and value, of the part or parts that were used to service the instrument or equipment; and

(v) The date the servicing was performed.

(2) This report shall be in addition to the entries on the reverse side of the export license required by § 786.2(d).

(e) *Records.* (1) The foreign-based service facility named on a reexport authorization issued pursuant to the provisions of this § 776.4 shall maintain a record of each reexport made against the reexport authorization. The record shall include, as a minimum:

(i) The reexport authorization number and expiration date;

(ii) A description of the instrument or equipment that was serviced;

(iii) The full name and address of the person or firm on whose premises the instrument or equipment was serviced;

(iv) A description of the part or parts, including quantity and value, that were used to service the instrument or equipment; and

(v) The date the servicing was performed.

(2) All such records shall be made available to U.S. Government officials for inspection, upon request, in accordance with the provisions of § 787.13. In the event that a foreign government regulation or statute prohibits a U.S. Government representative from inspecting the records in a foreign country, the Office of Export Licensing may, in substitution, require the submission of specified records, documents, or both.

(f) *Relationship to foreign laws.* No authorization granted under the provisions of this part shall in any way relieve any person from his responsibility to comply fully with the laws, rules, and regulations of the country from which the commodity is to be reexported or of any other country having authority over any phase of the transaction. Conversely, no foreign law, rule, regulation, or authorization in any way relieves any person from his responsibility to obtain such authorization from the Office of Export Licensing as may be required by the Export Administration regulations.

(g) *Effect of other regulations.* Insofar as consistent with the provisions of this part, all of the other provisions of the Export Administration regulations shall apply.

(The reporting requirements in paragraph (d) were approved by Office of Management and Budget under control number 0625-0067).

[44 FR 1099, Jan. 4, 1979, as amended at 45 FR 84027, Dec. 22, 1980; 47 FR 5209, Feb. 4, 1982; 48 FR 53066, Nov. 23, 1983; 50 FR 11995, Mar. 27, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 6644, Feb. 14, 1989]

§ 776.5 [Reserved]

§ 776.6 Chemicals.

Export license applications covering chemicals, medicinals, and pharmaceuticals shall state such facts relating to grade, form, concentration, mixtures, or ingredients as may be necessary to identify the commodity accurately.

§ 776.7 Machinery, equipment, and parts.[1]

Export license applications for machinery, equipment, and parts for machinery and equipment shall include the following additional identifying information:

(a) A copy of the manufacturer's current catalog or bulletin, or pertinent pages describing the commodity, unless previously furnished.

(b) The maximum rating of commodities having a rated capacity.

(c) For exports of *ball or roller bearings* (ECCN 1371) to Country Group W, Y or Z, or the People's Republic of China

(1) The name of the manufacturer;

(2) The bearing number as listed in the manufacturer's catalog; and

(3) The inner bore diameter of the bearing.

(d) For exports of *balls for bearings* (ECCN 1371) to Country Group W, Y, or Z, or the People's Republic of China:

(1) The type of metal;

(2) The grade of the ball (in accordance with standards adopted by the Anti-Friction Bearing Manufacturer's Association); and

(3) The basic size of the ball.

[45 FR 43142, June 25, 1980, as amended at 46 FR 38349, July 27, 1981; 48 FR 53066, Nov. 23, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.8 Aircraft and equipment, parts, accessories, and components therefor.

(a) *Spare parts accompanying aircraft.* For an export of aircraft and accompanying spare parts for such aircraft to any destination, except Country Group Q, W, Y, or Z, the applicant may:

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[1] Parts, accessories, and equipment that are to be scrapped are classified as scrap; *e.g.*, Commodity Group 6. See Supplement No. 1 to § 799.2, Interpretation 10.

(1) Include both the aircraft and parts on a single license application even though they do not have the same processing numbers; and

(2) Show the total value of all the accompanying spare parts without indicating the value of each Commodity Control List entry if, at the time the application is submitted, the applicant cannot determine the separate values for the parts under each entry.

The applicant shall, however, classify and describe the commodities in accordance with their respective Commodity Control List entries.

(b) *Loan or sale of aircraft equipment, parts, accessories, and components by airlines*—(1) *Authority.* Any airline[2] operating abroad which receives commodities from the United States for maintenance, repair, or operation of its aircraft may, for the purpose of maintaining in operation aircraft of another airline lend or sell such commodities to that airline, without written authorization from the Office of Export Licensing, provided that:

(i) The transaction is subject to an agreement or arrangement:

(A) That the lender will not receive any monetary profit from the transaction and that either the same or like commodities will be returned to the lender; or

(B) That payment for the commodities will be limited to no more than the original purchase price to the lender plus any expenses incurred in handling the commodities, e.g., transportation costs, warehousing costs, etc.;

(ii) The commodities will not be supplied for use on any aircraft registered in, or owned or controlled by, or chartered or leased to, a Group Q, S, W, Y or Z country, the People's Republic of China, Afghanistan, Iran or Syria, or any national thereof; and

(iii) The commodities will not be supplied for use on any aircraft located in a Group Q, S, W, Y or Z country, Afghanistan, Iran or Syria.

Transactions meeting the above prov sions are authorized notwithstandin any restrictions upon reexport s forth in the applicable destinatio control statement, on the validate export license, on any supporting documentation, or in the general licens provisions relating to the origina export from the United States.

(2) *Records.* The airline that provides the U.S. commodities shall maintain records, in the detail set forth below, for a period of two years from the date of the transaction. These records shall be available for inspection, upon demand, by the U.S. Department of Commerce, a U.S. Foreign Service post, or any other accredited representative of the U.S. Government. In the event the airline is prohibited by foreign government regulation or statute from permitting a U.S. Government representative to inspect its records, the airline shall *submit a report* of such transactions at the end of each calendar quarter during which any transaction(s) occurs. The report shall be sent to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. As a minimum, the records and reports shall include the following information for each transaction:

(i) Date the commodities are provided;

(ii) Name, business address, and nationality of the airline which received the commodities;

(iii) If the aircraft is leased or chartered, the name, business address, and nationality of the owner of the aircraft which received the commodities.

(iv) Country of the aircraft's registry and location of the aircraft at time the commodities were installed thereon; and

(v) Description of the commodities provided, including quantity and value thereof.

(For further recordkeeping requirements see § 787.13 of this subchapter.)

[35 FR 9166, June 12, 1970, as amended by Amdt. 11, 35 FR 18317, Dec. 2, 1970; Amdt. 20, 36 FR 8370, May 5, 1971; 45 FR 84027, Dec. 22, 1980; 46 FR 47067, Sept. 24, 1981; 47 FR 15113, Apr. 8, 1982; 48 FR 53066, Nov. 23, 1983; 48 FR 54000, Nov. 30, 1983; 51 FR 12839, Apr. 16, 1986; 51 FR 30632, Aug. 28, 1986; 52 FR 23168, June 18, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

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[2] See § 770.2 of this subchapter for definition of airline.

§ 776.9 Ship stores, plane stores, supplies, and equipment.

(a) *Exports requiring validated license.* A validated license shall be obtained to cover the export of any commodities (1) to be used on operating vessels and aircraft if the commodities are not authorized for export under the provisions of § 771.9, 771.10, 771.11, or § 771.12 of this subchapter; or (2) for vessels under construction if not authorized for export under any general license.

(b) *Preparation of license applications*—(1) *Vessel under construction.* A license application for export of any commodity or technical data, including ship stores, supplies, and equipment, to a vessel under construction shall be prepared on Form BXA-622P, Application for Export License, in accordance with Supplement No. 1 to Part 772 of this chapter, with the following modifications:

(i) [Reserved]

(ii) *Consignee in country of ultimate destination.* In Item 7, insert the name and address of shipyard where vessel is being constructed.

(iii) *Description of commodity or technical data.* For a vessel under 40 feet in length, state the length of the vessel in Item 9(b). For a vessel 40 feet in length or over, show the following information in Item 9(b), or on an attachment (if unknown, state "unknown"):

(A) Hull number and name of vessel (if unknown, state "unknown");

(B) Type of vessel;

(C) Name and business address of prospective owner, and his nationality (if unknown, state "unknown");

(D) Country of registry or intended country of registry (if unknown, state "unknown").

(iv) *Identification of parties to transaction.* In each case, all parties to the transaction, including the United States or foreign purchaser, shall be identified with a clear statement of the capacity or function of each, as provided in § 772.3 of this subchapter.

(2) *Aircraft under construction.* A license application for export of any commodity or technical data, including plane stores, supplies, and equipment, to an aircraft under construction shall be prepared on Form BXA-622P in accordance with Supplement No. 1 to Part 772 of this chapter, with the following modifications:

(i) [Reserved]

(ii) *Consignee in country of ultimate destination.* In Item 7, insert the name and address of the plant where the aircraft is being constructed.

(iii) *Description of commodity or technical data.* Show the following information in Item 9(b) or on an attachment (if unknown, state "unknown"):

(A) Type of aircraft and model number (if unknown, state "unknown");

(B) Name and business address of prospective owner and his nationality (if unknown, state "unknown");

(C) Country of registry or intended country of registry (if unknown, state "unknown").

(iv) *Identification of parties to transaction.* In each case, all parties to the transaction, including the United States or foreign purchaser, shall be identified with a clear statement of the capacity or function of each, as provided in § 772.3 of this subchapter.

(3) *Operating vessels and aircraft.* A license application for export of commodities or technical data, including ship or plane stores, supplies, and equipment (except as provided in § 776.9(c)) to an operating vessel or aircraft, whether in operation or being repaired, shall be prepared on Form BXA-622P in accordance with Supplement No. 1 to Part 772 of this chapter, with the following modifications:

(i) [Reserved]

(ii) *Consignee in country of ultimate destination.* In Item 7, insert the name of owner and port or point where the commodities or technical data will be taken aboard. Also, if a vessel, show name of vessel.

If, at the time of filing the license application, it is uncertain where the vessel or aircraft will take on the commodities or technical data, but it is known that the commodities or technical data will not be shipped to Country Group Q, S, W, Y or Z, or the People's Republic of China enter the following statement in this item:

Uncertain; however, shipment(s) will not be made to Country Group Q, S, W, Y or Z, or the People's Republic of China.

An export license issued under this circumstance will bear the following destination restriction:

Shipment(s) may be made to the named (vessel) (aircraft) at any port in any country except Country Group Q, S, W, Y or Z, or the People's Republic of China.

(iii) *Description of commodity or technical data.* For a vessel under 40 feet in length, state the length of the vessel in Item 9(b). For a vessel 40 feet in length or over, show the following information in Item 9(b), or on an attachment:

(A) Type of vessel;

(B) Business address of owner and his nationality;

(C) Country of registry; and

(D) Name of charterer and the terms and type of charter, if under charter.

(iv) *Identification of parties to transaction.* In each case, all parties to the transaction, including the United States or foreign purchaser, must be identified with a clear statement of the capacity or function of each as provided in § 772.3 of this subchapter.

(4) *Subsequent applications.* After the additional information required by paragraphs (b) (1), (2), and (3) of this section has been supplied to the Office of Export Licensing, a subsequent application for an additional license to export commodities to the same vessel or hull number under construction or the same operating vessel may incorporate the required additional information by reference to the previous application containing that information. In this event, each subsequent application shall include, in the "Additional Information" space or on an attachment:

(i) A certification that the information previously submitted to the Office of Export Licensing has not changed; and (ii) the appropriate case number of the previously submitted application, or if the case number is unknown, the applicant's and Export Control Commodity Numbers shown on that application. (Whenever possible, the case number should be indicated on the subsequent application, since failure to supply this number may result in delay in processing.)

(5) *Additional information.* Wh necessary, the Office of Export Lice ing may require the exporter submit a letter of confirmation or a plification of the information specifi in paragraph (b) of this section.

[35 FR 9166, June 12, 1970, as amended Amdt. 22, 36 FR 8932, May 15, 1971; Am 47, 37 FR 17706, Aug. 30, 1972; 40 FR 219 May 20, 1975; 42 FR 12853, Mar. 7, 1977; FR 18398, Apr. 7, 1977; 46 FR 21155, Apr. 1981; 46 FR 49111, Oct. 6, 1981; 47 FR 52 Feb. 4, 1982; 48 FR 53066, Nov. 23, 1983; FR 19811, May 10, 1984; 50 FR 29205, Ju 18, 1985; 51 FR 30632, Aug. 28, 1986. Rede ignated at 53 FR 37751, Sept. 28, 1988 a amended at 54 FR 6644, Feb. 14, 1989; 55 F 10611, Mar. 22, 1990]

§ 776.10 Electronic computers and relat equipment.

Special provisions relating to the li censing for export or reexport of elec tronic computers and/or related com modities (ECCN 1565) are set forth below.

(a) *Digital computers*—(1) *General requirements.* Applications to export or reexport "digital computers" or equipment containing digital computers to destinations in Country Groups Q, W, and Y, Afghanistan and the People's Republic of China or to upgrade existing "digital computer" installations in those areas, must be accompanied by Form BXA-6031P, Digital Computer System Parameters. Two or more forms may be submitted if needed to describe all equipment on complex systems. Specification sheets should be furnished to corroborate the data supplied on Form BXA-6031P and calculations used to arrive at values should also be furnished, as appropriate. Observe the precise definitions in Advisory Notes 9, 12, and 16 to ECCN 1565A before making calculations.

(2) *Special documentation requirements.* Applications to export or reexport computers that are described in Advisory Note 12 to ECCN 1565A, or that exceed any of the limits specified in Advisory Note 12, must be accompanied by a signed statement from a responsible representative of the end-user or importing agency that describes the proposed end-use and includes the certifications contained in

paragraph (c)(1) of Advisory Note 12 to ECCN 1565A.

(3) *Visitation requirements.* Quarterly visits and periodic reports on computer systems described by Advisory Note 12 to ECCN 1565A will be required if the parameters of the equipment to be exported exceed the limits contained in paragraph (c)(3) of Advisory Note 12. The visitation and reporting requirements are described in paragraph (c)(4) of Advisory Note 12.

(b) *Analog computers.* (1) Applications to export or reexport analog computers to Country Groups Q, W, and Y, Afghanistan and the People's Republic of China should include the following information on their technical characteristics:

(i) The quantity, "static accuracy", and "total error" rating of each type of summer, integrator, multiplier, or function generator employed; and

(ii) The number of integrator time scales and whether or not they are switchable during operation.

(2) *Definitions of terms.* Definitions of all relevant terms are contained in Advisory Notes 12 and 16 to ECCN 1565A.

(c) *Failure to submit information.* Failure to submit the required information (as specified in this § 776.10 and on Form ITA-6031P) will result in export license applications being returned without action.

(Approved by the Office of Management and Budget under control number 0625-0038.)

[51 FR 1493, Jan. 14, 1986, as amended at 51 FR 44784, Dec. 12, 1986; 53 FR 2583, Jan. 29, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 35174, Aug. 24, 1989]

§ 776.11 Numerical control units, Numerically controlled machine tools, Dimensional inspection machines, Direct numerical control systems, Specially designed assemblies, and Specially designed software.

This section set forth special provisions relating to the licensing for export or reexport of numerical control units, numerically controlled machine tools, dimensional inspection machines, and specially designed software for such commodities to destinations in Country Groups Q, W, or Y or the People's Republic of China.

(a) *Numerical control units.* Include the following information with the validated license application (Form ITA-622P) and reexport request (Form ITA-699P):

(1) Make and model number of the control unit;

(2) Description of the manner in which the computer is embedded in, incorporated in, or associated with the CNC unit. Specify the make and the model of the computer (For a clarification of terms, refer to the technical notes in ECCN 1091A or Advisory Note 16 of ECCN 1565A of the Commodity Control List—Supp. No. 1 to § 399.1);

(3) Number of axes the control unit is capable of simultaneously controlling in a coordinated contouring mode, and type of interpolation (linear, circular, and other);

(4) Minimum programmable increment;

(5) Number and type of parallel data communication interfaces;

(6) Number and type of serial data communication interfaces;

(7) The internal word size in number of bits, including parity bit;

(8) A description and an itemized list of all machine control features that will be supplied with the control unit;

(9) A description and an itemized list of all software/firmware to be supplied with the control unit, including software/firmware for any programmable control unit or device to be supplied with the control unit;

(10) A description and an itemized list of all documentation for the software/firmware above.

(b) *Numerically controlled machine tools and dimensional inspection machines.* Include the following information with the validated license application (Form ITA-622P) or reexport request (Form ITA-699P):

(1) Name and model number of machine tool or dimensional inspection machines;

(2) Type of equipment, e.g., horizontal boring machine, machining center, dimensional inspection machine, turning center, etc.;

(3) Description of the linear and rotary axes capable of being simultaneously controlled in a coordinated

contouring mode, regardless of the fact that the coordinated movement of the machine axis may be limited by the numerical control unit supplied with the machine tool;

(4) Maximum slide travel in each axis;

(5) Power of spindle drive motor;

(6) Number of working spindles;

(7) Spindle diameter (inside bearing diameter);

(8) Motion of the spindle axis measured in the axial direction in one revolution of the spindle, and a description of the method of measurement;

(9) Motion of the spindle axis measured in the radial direction in one revolution of the spindle, and a description of the method of measurement;

(10) Incremental positioning accuracy in any 200 mm of travel, and a description of the method for measurement;

(11) Overall positioning accuracy, and a description of the method for measurement.

(Approved by the Office of Management and Budget under control number 0625-0152)

[50 FR 37113, Sept. 11, 1985, as amended at 51 FR 16674, May 6, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.12 Parts, components, and materials incorporated abroad into foreign-made products.

U.S. origin parts, components, materials, or other commodities incorporated abroad into a foreign-made product are subject to United States export controls under § 776.12. U.S. origin parts, components, materials, or other commodities that are not incorporated abroad into products are subject to the reexport provisions of part 774. U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the reexport provisions of part 774. The Department of Commerce asserts control over parts, components, and materials incorporated in foreign-made products to prevent the use of such U.S. origin parts, components, or materials in a manner detrimental to the national security or foreign policy of the United States. These controls do not apply if either the U.S. content or the foreign-made product is subject to control only for short supply reasons.

(a) *Calculation of values.* Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) *U.S. content value.* (i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect "fair market" prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination under General License G-DEST, G-COCOM, G-COM, or GFW.

(2) The foreign-made product value is the normal export selling price f.o.b. factory (excluding value added taxes or excise taxes).

(b) *Determining approval requirements.* The prior written approval of the Office of Export Licensing is required for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are not G-DEST to the new destination, without exception. Prior written approval also is required for any other foreign-made product incorporating U.S. origin parts, components, or materials unless:

(1) The export of the foreign-made product meets any of the conditions of § 774.2 (permissive reexports); or

(2) All of the U.S. content could be exported from the United States to the new destination under General License G-DEST or G-COCOM; or

(3) The U.S. content value is 10% or less; or

(4) The U.S. content value is 25% or less and the ultimate destination of the foreign-made product is not located in Country Group S or Z, or in

Iran, Syria or the People's Democratic Republic of Yemen; or

(5) None of the technical performance characteristics of the U.S. content exceed those of any Advisory Note in the CCL that indicates licenses are likely to be approved for Country Groups Q, W, and Y and the ultimate destination of the foreign-made product is not located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen.

NOTE: See § 776.12(g) for other controls that may apply even if the export would be excepted from prior written approval by paragraph (b) of this section.

(c) *Applicability of exceptions to approval requirements.* The exceptions to the approval requirements in paragraph (b) of this section apply only if the U.S. content is normal and usual for the product being exported and is not physically incorporated in the foreign product as a device to evade the requirement for reexport authorization.

(d) *Spare parts.* Shipments of foreign-made products that incorporate U.S. origin components may be accompanied by U.S. origin controlled spare parts, provided that they do not exceed 10% of the value of the foreign-made product.

(e) *How to request approval*—(1) *Request on license application.* Prior to exporting from the U.S., exporters may obtain approval by submitting a license application on Form ITA-622P, indicating that the parts, components, or materials covered by the application will be incorporated abroad into products that will then be sent to designated third countries. When approval is sought on the application, the description of end use should include a general description of the commodities to be manufactured, their typical end-use, and the countries where those commodities will be marketed. The countries may be listed specifically or may be identified by Country Groups, geographic areas, etc. OEL may exclude certain destinations, consignees, or uses in granting approval. Unless specific restrictions are placed on the license by OEL, the issuance of the export license constitutes approval of the designated use of U.S. origin, parts, components or commodities. Further, when use of U.S. parts, components or materials has been approved on Form ITA-6052P, no further approval is necessary under this parts and components procedure for such use.

(2) *Individual requests.* When it is not practical for the U.S. exporter to obtain approval under paragraph (e)(1) of this section, then approval may be obtained by submitting an individual request on Form ITA-699P with the following information:

(i) In Item 4, insert "Parts and Components";

(ii) In Item 6, insert the foreign party who will be receiving the foreign-made product (if various, state "various" and list the specific countries, Country Groups, or geographic areas in Item 14 or on an attached sheet);

(iii) In Item 8, insert the foreign party who will be exporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Item 9(a), specify the quantity for each foreign-made product, if known—otherwise insert "1";

(v) In Item 9(b), briefly describe the foreign-made product that will be exported, specifying type and model or part number. Attach brochures or specifications, if available. Show as part of the description in Item 9(b) the unit value, in U.S. dollars, of the foreign-made product (if more than one foreign-made product is listed on the application, specify the unit value for each type/model/part number). Also include in Item 9(b) a description of the U.S. content (including the applicable Export Control Commodity Number(s)) and its value in U.S. dollars. If more than one foreign-made product is identified on the application, describe the U.S. content and specify the U.S. content value for each foreign-made product. Provide sufficient supporting information to explain the basis for the stated values. To the extent possible, explain how much of the value of the foreign-made product represents foreign origin parts, components, or materials, as opposed to labor, overhead, etc. When the U.S. content varies and cannot be specified in advance, provide a range of percentage and value that would indicate the minimum and maximum U.S. content;

(vi) In Item 9(c), enter the applicable Export Control Commodity Number (ECCN) opposite the description of each foreign-made product;

(vii) In Item 9(d), "total price", insert "0" opposite the commodity description of each foreign-made product;

(viii) In Item 9(d), "total of entire transaction", insert "0";

(ix) Include separately in Item 9(b) a description of any U.S. origin spare parts to be reexported with the foreign-made product, if they exceed the amount allowed by paragraph (d) of this section. Enter the quantity, if appropriate, in Item 9(a). Enter the ECCN for the spare parts in Item 9(c) and show the value of the spare parts in Item 9(d);

(x) In Item 11, indicate "Parts and Components Request" and describe the activity of the end-user (new ultimate consignee) and the end-use of the foreign-made product. Indicate the final configuration if the product is intended to be incorporated in a larger system. If end-use is unknown, state "unknown" and describe the general activities of the end-user;

(xi) In Item 13, check "Other" and insert "P & C";

(xii) If the foreign-made product is the direct product of U.S. origin technical data that was exported subject to written assurance, a request for waiver of that assurance, if necessary, may be made in Item 14. If U.S. origin technical data will accompany a shipment to Country Groups Q, S, W, Y or Z, or the People's Republic of China, explain in Item 14 what type of data and how it will be used.

(3) *Multiple requests.* OEL will consider requests on Form BXA-699P for authorization to export to multiple consignees or multiple countries. Such requests will not be approved for Country Groups S or Z and may be approved only in limited circumstances for Country Groups Q, W, Y, and the People's Republic of China. To submit such a request, insert "various" in Item 6 of Form BXA-699P and list the countries or Country Groups where the commodities will be marketed in Item 11 or 14.

(4) *Letter requests.* OEL recognizes the difficulty of obtaining U.S. forms abroad and will accept letter requests from foreign parties when Form ITA-699P cannot be obtained. If a letter request, rather than a Form ITA-699P, is submitted, the request should be clearly labeled on the envelope as a parts and components request and should be sent to:

Parts & Components, Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The letter request should include the following information:

(i) The designation "Parts and Components Request" prominently displayed on the envelope and on the top of the first page;

(ii) A description of the product or products being manufactured abroad (with brochure if available);

(iii) Types of U.S. origin parts, components, or materials that will be incorporated into the foreign product;

(iv) Types of customers and end-uses that are typical for the product, and specific end use if known;

(v) Percentage (or range of percentage) of the product's value that constitutes U.S. origin parts, components, or materials; and

(vi) Destinations to which the products are intended to be exported, if this is a multiple request (country listing, geographic groupings, or Country Groups).

(5) *Supporting documentation.* The supporting documentation otherwise required for a license application need not be submitted with a parts and components request, except that Form BXA-6031P should be furnished when a computer system is being exported to Country Group Q, W, or Y, Afghanistan or the People's Republic of China.

(f) *Action on requests.* If the request is inadequate, or if the export may be made without written approval, OEL will notify the applicant. Contacts on problems can be facilitated by including applicable telephone, telex, and facsimile numbers on the request. OEL will review properly submitted requests and will validate the request or will notify the applicant of reasons for denial. While Parts and Components authorizations are generally valid for an indefinite period, OEL may impose a specific validity period.

(g) *Other requirements.* Whether or not authorization is required under this § 776.12, approval may be required for certain foreign made direct products of U.S. origin technical data (see § 779.8). When authorization is necessary under both § 776.12 and § 779.8, both requests may be made on the Parts and Components request. In addition, U.S. persons should be aware of controls administered by the Office of Foreign Assets Control, Department of the Treasury, which may limit certain transactions.

(Approved by the Office of Management and Budget under control number 0694-0010)

[52 FR 9149, Mar. 23, 1987, as amended at 52 FR 44596, Nov. 20, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 35175, Aug. 24, 1989; 54 FR 40642, Oct. 3, 1989]

§ 776.13 Communications intercepting devices.

(a) *Export license requirements.* A validated export license is required for the export to any destination (including Canada) of any electronic, mechanical, or other device primarily useful for surreptitious interception of wire or oral communications. Any exporter who knows, or has reason to believe, that such commodities will be used for such purpose shall include that information on his export application. The application shall be on Form ITA-622P, Application for Export License. The words "COMMUNICATIONS INTERCEPTING DEVICE" shall be entered in Item 4, "Special Purpose."

(b) *Qualifications of exporter.* Licenses to export the commodities described in paragraph (a) of this section will be issued only to:

(1) A provider of wire or electronic communication service or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; or

(2) Officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

(c) *Examples of communications intercepting devices.* An electronic, mechanical, or other device that can be used for interception of wire or oral communications is subject to the provisions of this section if its design renders it primarily useful for surreptitious listening even though it may also have innocent uses. A device is not restricted merely because it is small or may be adapted to wiretapping or eavesdropping. Some examples of devices to which these restrictions apply are: The martini olive transmitter; the infinity transmitter; the spike mike; and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(d) *Effect of other provisions.* (1) If, at the time of export, a validated license is also required under other provisions of the Export Administration regulations, the application shall be submitted in accordance with this section as well as all other applicable provisions. The requirements of this section are in addition to, rather than in lieu of, other validated license requirements set forth in the Export Administration Regulations.

(2) Insofar as consistent with the provisions of this section, all other provisions of the Export Administration Regulations shall apply also to export license applications and export licenses for these commodities.

[35 FR 9166, June 12, 1970, as amended at 47 FR 5210, Feb. 4, 1982; 53 FR 18550, May 24, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.14 Crime control and detection commodities.

(a) *Export license requirements.* Pursuant to section 6(k) of the Export Administration Act of 1979, an individual

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validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data, except that authorized under General License *GTDA* (§ 779.3) to any destination except Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Turkey and the United Kingdom. Commodities affected by this requirement are identified on the Commodity Control List under CCL listings 5480B, 1502A (police-model infrared viewers only), 1516A, 1522 (laser-driven fingerprint equipment only), 1565A (computerized fingerprint equipment only), 4597B, 5597B, 5680B, 1746A (police-model helmets containing 50% or more aromatic polyamide fiber by value only), 4799B, 2901A(a), 5998B, and 5999B. Applications for validated export licenses for "specially designed implements of torture" will be denied. Applications for other items controlled under this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

(b) *Effect on other provisions.* (1) If, at the time of export or reexport, a validated license is also required under other provisions of the Export Administration regulations, the application shall be submitted in accordance with this section as well as all other applicable provisions. The requirements of this section are in addition to, rather than in lieu of, other validated license requirements set forth in the Export Administration Regulations.

(2) Insofar as consistent with the provisions of this section, all other provisions of the Export Administration Regulations shall apply also to export license applications and reexport requests and to export licenses and reexport authorizations for these commodities.

[39 FR 26719, July 23, 1974, as amended at 46 FR 31407, June 16, 1981; 47 FR 9202, Mar. 4, 1982; 48 FR 25171, June 6, 1983; 50 FR 3743, Jan. 28, 1985; 50 FR 27421, July 3, 1985; 51 FR 34588, Sept. 30, 1986; 52 FR 5532, Feb. 25, 1987; 52 FR 11640, Apr. 10, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.15 Donations of goods to meet basic human needs.

Pursuant to section 6(g) of the Export Administration Act of 1979, as amended, exports of donations to meet basic human needs are authorized under a Humanitarian License Procedure set forth in § 773.5. Exports that qualify under this procedure are therefore exempt from the licensing requirements contained in §§ 785.1 and 785.7.

[51 FR 8484, Mar. 12, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.16 Regional stability commodities and equipment.

Pursuant to section 6 of the Export Administration Act of 1979, a validated export license is required for foreign policy purposes to export:

(a) Military vehicles and certain commodities (specially designed) used to manufacture military equipment, identified on the Commodity Control List under CCL listings 2018A, 1118A, 2406A, and 2603A, to any destination except Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Turkey and the United Kingdom. Applications for validated licenses will generally be considered favorably on a case-by-case basis unless there is evidence that the exports would contribute significantly to the destabilization of the region to which the equipment is destined.

[46 FR 31408, June 16, 1981, as amended at 47 FR 11248, Mar. 16, 1982; 48 FR 25171, June 6, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.17 Robots, robot controllers, end-effectors, related vision systems, or related software.

An application for authorization to export or reexport robots, robot controllers, end-effectors, related vision systems, or related software (ECCN 1391A) to Country Groups Q, W, and Y and the People's Republic of China and requests for commodity classifications shall contain the following information as applicable.

(a) *General.* (1) Describe fully any robot's capability of using sensors to generate or to modify robot program instructions. For robots using sensors for welding only, describe in particular the manner in which the sensors are used in weld seam tracking.

(2) Specify if the robot, the controller, or the end-effector is specially designed to comply with national safety standards for explosive munitions environments.

(3) If the robot or the end-effector is equipped with self-sealing hydraulic lines, provide the flash point of the hydraulic fluid for hydraulic robots.

(4) If the robot, the controller, or the end-effector is specially designed for underwater use, specify what depth.

(5) Specify if the robot, the controller, or the end-effector is capable of operating at altitudes exceeding 30,000 meters.

(6) Specify if the robot, the controller, or the end-effector is specially designed for outdoor applications and if it meets military specifications for those applications.

(7) Specify if the robot, the controller, or the end-effector is specially designed for operating in an electromagnetic pulse (EMP) environment.

(8) Specify if the robot, the controller, or the end-effector is specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (i.e., non-nuclear industry) ionizing radiation.

(9) Specify if the robot is equipped with robot manipulator arms that contain titanium-based alloys or fibrous and filamentary materials. If it is, describe in detail.

(10) Specify if the robot is equipped with precision measuring devices. If it is, provide range, accuracy, linearity, and draft as applicable.

(11) Specify if the robot or the controller is specially designed to move autonomously, other than on a fixed track, the robot structure through three-dimensional space in a simultaneously coordinated manner.

(12) Describe the manner in which the robot may be used in electronics or microelectonics manufacturing.

(13) Describe the manner in which the robot may be used in nuclear industry/manufacturing.

(b) *Robot controllers.* (1) Provide information in accordance with § 776.11 of this part if the controllers are capable of controlling numerically controlled machine tools or dimensional inspection machines.

(2) Refer to computer regulations for general purpose computers used as controllers.

(3) Provide minimum programmable increment.

(4) Specify if the controller is equipped with interface meeting ANSI/IEEE standard 488-1978, or equivalent standard for parallel data exchange and if so, describe.

(5) Describe the programming methods. (e.g., lead-through, key-in, teach-pendent, external computer)

(6) Provide the size of internal computer words in bits.

(7) Describe any incorporated interpolation algorithms.

(8) Describe any capabilities of online (real-time) generation or modification of the programmed path, velocity or functions.

(c) *End-effectors.* Specify if the end-effector is equipped with interface meeting ANSI/IEEE standard 488-1978, or equivalent, for parallel data exchange and if so, describe.

(d) *Vision systems.* Provide the following information of the vision system if the robot is equipped with a vision system:

(1) Number of pixels (as well as the addressable matrix) the vision system is capable of processing, and the type of camera used.

(2) Number of single-scene analysis processor, and word size (in bits) of the processor.

(3) Description of any parallel processing capability.

(4) Description of the programming methods in detail.

(5) Description of the capability of the vision system for providing continuous reaction or updating the robot's position while the robot is moving.

(6) Provide the speed of scene-analysis.

(e) *Software.* Provide full descriptions, as specified above, of the robots, the robot controllers, the end-effectors, or the vision systems, for which the software is specially designed. Provide the format (object code, source code, etc.) in which the software will be exported. For vision system software, provide a full description of the software's capabilities of three-dimensional modelling and three-dimensional scene analysis including any Boolean logic operations, if any.

[52 FR 776, Jan. 9, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 776.18 Equipment and related technical data used in the development of missiles capable of delivering nuclear weapons.

In support of U.S. foreign policy to limit the proliferation of missiles that are capable of delivering nuclear weapons, an individual validated license is required to export certain equipment and technical data related to the development and production of such nuclear-capable missiles to Country Groups QSTVWYZ. The specific commodities appear within ECCNs 2018A, 2118A, 4118B, 4302B, 1357A, 1361A, 1362A, 1385A, 1460A, 1485A, 1501A, 1516A, 1517A, 4518B, 1529A, 4529B, 1531A, 1533A, 1564A, 4564B, 1565A, 1568A, 4568B, 4587B, 1595A, 1715A, and 1746A.

(a) *Definition.* The term "missiles capable of delivering nuclear weapons" is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram (kg) payload to a range of at least 300 kilometers (km).

(b) *Licensing policy.* Applications to export the commodities and related technical data subject to this policy will be considered on a case-by-case basis to determine whether the export would make a significant contribution to proliferation of missiles capable of delivering nuclear weapons. Applications involving those commodities controlled under this section that are classified under ECCN 2018A on the Commodity Control List (Supplement No. 1 to § 799.1) and related technical data will generally be denied.

(1) In reviewing license applications subject to the missile technology controls, the following factors are among those considered to determine what action should be taken on individual applications:

(i) The assessment of the end-use;

(ii) The significance of the export in terms of the potential development of missiles capable of delivering nuclear weapons;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country; and

(v) The types of assurances or guarantees against use for nuclear weapons delivery purposes or proliferation given in a particular case.

(2) License applications involving contracts entered into prior to April 15, 1987, will be considered on a case-by-case basis consistent with applicable national security licensing criteria or other applicable controls. Such license applications must be accompanied by documentation sufficient to establish the existence of a contract.

(3) License applications involving contracts for batch mixers specified in ECCN 4118B that were entered into prior to January 19, 1990, will be considered on a case-by-case basis consistent with other applicable controls. Such license applications must be accompanied by documentation sufficient to establish existence of a contract.

(c) Commodities and technical data controlled under this section are not eligible for special licenses.

[52 FR 28545, July 31, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 35175, Aug. 24, 1989; 55 FR 13122, Apr. 9, 1990; 55 FR 26657, June 29, 1990; 55 FR 35829, Aug. 31, 1990; 55 FR 35839, Aug. 31, 1990]

§ 776.19 Chemical and biological agents.

(a) The following controls are maintained in support of U.S. foreign policy, and particularly the U.S. policies of opposing the proliferation and illegal use of chemical and biological weapons:

(i) Chemicals identified in ECCN 4798B require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey and the United Kingdom;

(ii) Chemicals identified in ECCN 5798F require a validated license for export from the United States to Iran, Iraq, Libya and Syria;

(iii) Viruses and viroids identified in ECCN 4997B and bacteria, fungi and protozoa identified in ECCN 4998B require a validated license to all destinations except Canada.

(b) Unless the criteria stated in paragraph (c), (d), (e), (f), (g) or (h) of this section are met, applications to export the goods in ECCNs 4798B, 5798F, 4997B, and 4998B will generally be denied to Libya, Iran, Iraq and Syria. Applications will generally be approved to other destinations, except where there is reason to believe that those goods will be used in producing chemical or biological weapons or will otherwise be devoted to chemical or biological warfare purposes.

(c) Applications to export the following chemicals from the United States to Syria, in performance of a contract entered into before April 28, 1986, generally will be approved: Dimethyl methylphosphonate; methyl phosphonyldifluoride; phosphorous oxychloride; thiodiglycol; dimethylamine hydrochloride; dimethylamine; ethylene chlorohydrin (chloroethanol); and potassium fluoride.

(d) Applications to export the following chemicals from the United States to Iran, Iraq or Syria, in performance of a contract or agreement entered into before July 6, 1987 will generally be approved: Dimethyl phosphite (dimethyl hydrogen phosphite); methyl phosphonyldichloride; 3-quinuclidinol; N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; 3-hydroxy-l-methylpiperidine; trimethyl phosphite; phosphorous trichloride; and thionyl chloride.

(e) Applications to export other items in ECCNs 4798B, 4997B, and 4998B from the United States to Iran, Iraq or Syria in performance of a contract entered into before February 22, 1989 will generally be approved.

(f) Applications to export the following chemicals from the United States to Iran, Iraq, Libya or Syria, in performance of a contract entered into before December 12, 1989, will generally be approved: potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine.

(g) Applications to export phosphorus trichloride, trimethyl phosphite, and thionyl chloride from the United States to all destinations, except those described below, in performance of a contract entered into before December 12, 1989, will generally be approved. This provision does not apply to exports to Country Groups S and Z or to military or police entities in South Africa and Namibia. For exports to Iran, Iraq and Syria, paragraph (d) of this section applies.

(h) Consistent with part 774, the reexport to Iran, Iraq, Libya or Syria of chemicals controlled under ECCNs 4798B and 5798F is prohibited without authorization requirement does not apply to reexports from NATO member countries, Australia, Austria, New Zealand, Ireland, Japan and Switzerland. Applications to reexport to Iran, Iraq, Libya or Syria, in performance of a contract entered into before December 12, 1989, will generally be approved.

(i) Applicants who wish a pre-existing contract to be considered in reviewing their license applications must submit adequate documentation demonstrating the existence of the contract.

(j) The reexport provisions of part 774 are not applicable to the foreign policy controls of this section on viruses and viroids identified under ECCN 4997B and bacteria, fungi and protozoa identified under ECCN 4998B. However, the export of those commodities from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part, to Iran, Iraq, Syria or Libya is prohibited without a validated license.

(k) The provisions of § 776.12 are not applicable to the foreign policy controls of this section.

(l) When preparing a license application for chemicals, applicants shall type the Chemical Abstract Service (C.A.S.) Registry number in Item 9(b) before each chemical name. The C.A.S. numbers are listed with the controlled chemicals in ECCNs 4798B and 5798F under the "List of Chemicals." See Supplement No. 1 to § 799.2, Interpretation 23: Precursor Chemicals, for synonyms of controlled chemicals in ECCNs 4798B and 5798F.

[54 FR 8283, Feb. 28, 1989, as amended at 54 FR 52018, Dec. 20, 1989; 55 FR 10051, Mar. 19, 1990]

PART 777—SHORT SUPPLY CONTROLS AND MONITORING

Sec.
777.1 General provisions: Short supply controls.
777.2 Past Participation in Exports licensing method.
777.3 Unique hardship and exceptions.
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SUPPLEMENT No. 1—[RESERVED]
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SUPPLEMENT No. 3—PETROLEUM AND PETROLEUM PRODUCTS INCLUDED IN THE DEFINITION OF "PETROLEUM" UNDER THE NAVAL PETROLEUM RESERVES PRODUCTION ACT OF 1976
SUPPLEMENT No. 4—UNPROCESSED WESTERN RED CEDAR COMMODITIES SUBJECT TO VALIDATED LICENSING

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94-163 of December 22, 1975 (42 U.S.C. 6212) as amended by Pub. L. 99-58 of July 2, 1985; sec. 101, Pub. L. 93-153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95-372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), as amended; sec. 201 and 201(11)(e), Pub. L. 94-258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 2518 June 18, 1985); sec. 125, Pub. L. 99-64 of July 12, 1985 (46 U.S.C. 466(c)); Presidential Findings of December 31, 1988 (54 FR 271, January 5, 1989); and sec. 305, Pub. L. 100-449 of September 28, 1988.

EDITORIAL NOTE: Part 377 was redesignated as Part 777 at 53 FR 37751, Sept. 2 1988.

§ 777.1 General provisions: Short supply controls.

(a) *Statutory requirements.* The Export Administration Act of 1979, as amended, requires the control of commodities to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand. The Energy Policy and Conservation Act contains mandatory and discretionary authority to control exports of energy and energy-related commodities as may be necessary to achieve the purposes of that Act. Furthermore, the Trans-Alaska Pipeline Authorization Act amending section 28(u) of the Mineral Leasing Act of 1920, and the Naval Petroleum Reserves Production Act of 1976 contain specific restrictions on the export of certain petroleum and petroleum products. These statutory requirements are implemented chiefly by the provisions set forth below under the procedures of the Export Administration Act of 1969, including the enforcement and penalty provisions thereof.

(b) *Commodities subject to short supply quota controls.* Commodities currently under short supply quota controls are listed in Supplement No. 1 to this part. Generally, an exporter's share of any quantitative quota that may be established shall be allocated in accordance with the Past Participation in Exports Licensing Method described in § 777.2. The Office of Export Licensing may authorize commodities subject to quantitative restriction to be licensed without regard thereto, if they were manufactured or processed in, and are being shipped from, a U.S. foreign trade zone, or if they are ineligible for shipment under General License solely because of the limitations of § 771.2(c)(9) of this chapter.

(c) *Applications for validated licenses to export commodities subject to short supply controls*—(1) *Submission of applications.* An application for a validated license to export a commodity subject to short supply controls under this Part 777 will be considered if submitted in accordance with the provisions of this part and Part 772 of this chapter to the Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230.

(2) *Issuance of validated licenses.* After receipt and consideration of an application submitted as provided in paragraph (c)(1) of this section the Office of Export Licensing may issue a validated license under the appropriate provisions of this part. In making a determination with respect to an application in which unique hardship is asserted, the Office of Export Licensing will consider the guidelines and criteria specified in § 777.3.

(3) *Emergency clearance.* Exporters seeking emergency clearance for export or reexport of commodities subject to short supply export limitations should contact the Exporter Assistance Staff of the Office of Export Licensing (Telephone: 202-377-4811; telex: 892536; telefax: 202-377-3322). Mail applications to the Processing Unit, P.O. Box 273, Office of Export Licensing, Washington, DC 20044. Courier deliver or hand-carry the applications to the Processing Unit, Room H-2705, Office of Export Licensing, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230 for instructions.

(4) *Denial of validated license.* If an application for a validated license is denied in whole or in part, the Office of Export Licensing shall issue a formal notice of the denial to the applicant.

(d) *Appeals.* Any administrative action taken under this Part 777 may be appealed in accordance with Part 789 of this chapter.

[35 FR 9173, June 12, 1970, as amended at 39 FR 10557, Mar. 21, 1974; 39 FR 18434, May 28, 1974; 39 FR 35131, Sept. 30, 1974; 41 FR 2077, Jan. 14, 1976; 42 FR 18397, Apr. 7, 1977; 43 FR 47172, Oct. 13, 1978; 45 FR 58335, Sept. 3, 1980; 45 FR 59300, Sept. 9, 1980; 47 FR 15113, Apr. 8, 1982; 50 FR 41133, Oct. 9, 1985; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 777.2 Past Participation in Exports licensing method.

(a) *General.* The Past Participation in Exports licensing method helps to maintain a normal pattern of export trade during periods of short supply and to assure an equitable distribution of the available export quota among exporters. This procedure allocates the bulk of the export quota to firms that have participated in exports during a representative base period, but reserves a small portion of the quota for exporters who do not have this trade history.

(b) *Participation in quota allotments*—(1) *Restrictions.* A single firm is entitled to participate only once in each quota established for each commodity or category of commodities. For this purpose, the term "single firm" includes all persons or firms associated in business with a person or firm claiming or receiving an allocation from the same export quota. Claiming an additional participation through any device whatsoever, including the transfer or assignment of an export order, is prohibited and may result in the imposition of sanctions provided for in Parts 787 and 788 of this subchapter.

(2) *Order party.* Generally, any quantity licensed under a quota is charged to the quota share allocated to the licensee. Where the licensee received the export order from another person or firm in the United States (the "order party," as defined in § 772.3 of this subchapter) or from a foreign subsidiary, branch, affiliate, or

agent of such order party, any quantity licensed will be charged to the quota share of the order party. Therefore, if the applicant did not receive directly the initial order from the foreign ultimate consignee or purchaser, the signature of the order party is required on his license application in accordance with § 772.3 of this subchapter.

(c) *Submission of statement of past participation*—(1) *Requirements.* To claim a share of an export quota for a commodity, or category of commodities, an exporter shall submit Form DIB-669P, Past Participation Statement, on which the exporter shall list his exports of the commodity(ies) during the specified base period.

(i) All information required by the applicable commodity sections of this Part 777; and

(ii) The name of each person or firm engaged in the export of the commodity(ies) that:

(A) Is directly or indirectly owned or controlled by the exporter submitting the statement; or

(B) Directly or indirectly owns or controls the operations of the exporter submitting the statement.

(2) *Unique or unusual factors.* If there are any unique or unusual factors affecting an exporter's history of exports during the base period—such as commencement or termination of export activity, disruption of exports due to strikes, acts of God, or seasonal variations or supply-demand cycles impacting his level of exports—which an exporter believes should be taken into consideration in the allocation of quotas, these should be succinctly stated in a letter to be considered with the Past Participation Statement.

(3) *Exports excluded from statement.* The quantity and value of the following types of shipments shall not be included in the statement of past participation, unless specifically required:

(i) Shipments to territories, dependencies, and other possessions of the United States;

(ii) Intransit shipments exported under General License GIT; and

(iii) Shipments to Canada.

(4) *Successors in interest.* Where a successor firm has acquired the business interests of a predecessor and the terms of acquisition preclude the pre ecessor from claiming past particip tion in exports, the successor may in clude its predecessor's record of pa participation in exports for the pu pose of establishing the successor firm as a historical exporter. The successo firm shall submit a statement of pa participation and provide a full expla nation of the association between the entities concerned, including the following signed statement:

> The terms of acquisition of the busines interests of (Name of predecessor firm) preclude the predecessor firm from claiming past participation in exports for the purpose of obtaining export licenses under the historical pattern of export licensing.

(d) *Allocation of quotas*—(1) *General—allocation on basis of past exports.* After evaluating the statements of past participation, the Office of Export Licensing will inform each exporter of his share of the export quota based on his shipments during the base period.

(2) *Reduction or cancellation of future quota allocations where exporters do not adequately substantiate exports claimed on statements of past participation.* If it is determined—through an audit or otherwise—that

(i) Past Participation Statements overstate an exporter's history of exports during the base period, and

(ii) Actual exports have occurred that were greater than would have been authorized if the exporter's Past Participation Statement had accurately reflected the provable export history of such exporter, the Department will make appropriate offsetting adjustments in the exporter's future quota entitlements. Whenever such action is taken, the exporter will be notified in writing of:

(A) The amount by which his export quota entitlement is being reduced;

(B) The approximate times within the base period when shipments were reported that have not been documented or otherwise proven and the approximate quantities involved; and

(C) Approximate dates and time periods of shipments that would not have been authorized had the exporter's Past Participation Statement accurately reflected his documentable exports during the base period. Such actions reducing individual companies' quota entitlements will be independent of any compliance actions undertaken by the Department.

(3) *Reduction or cancellation of future quota allocations where exporters have exported commodities in excess of amounts authorized by validated export licenses.* Where an exporter has exported commodities under short supply control without a validated license, or in quantities exceeding license authorizations, or after the expiration of a license, the Department will offset such unauthorized exports against future quota entitlements of such exporters by reducing or cancelling their entitlements as appropriate. Whenever such action is taken, the exporter will be notified in writing of the changes in his export quota entitlement(s) and of the approximate time periods during which unauthorized shipments were made. Such actions will be independent of any compliance actions undertaken by the Department.

(e) *Submission of applications.* For certain commodities licensed under the Past Participation in Exports licensing method, submission of export license applications is subject to published time schedules. These commodities and the filing dates will be listed in a supplement. Applications covering other commodities listed therein may be submitted at any time, as specified in the Supplement. Dates included in the published time schedules mentioned above refer to the dates within which license applications must be physically received in the Processing Unit of the Office of Export Licensing. Mail applications to the Processing Unit, P.O. Box 273, Office of Export Licensing, Washington, DC 20044 of the Main Department of Commerce Building, 14th and E Streets, NW., Washington, DC.

[35 FR 9173, June 12, 1970, as amended at 41 FR 2077, Jan. 14, 1976; 44 FR 30322, May 25, 1979; 46 FR 5866, Jan. 21, 1981; 51 FR 30632, Aug. 28, 1986; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 777.3 Unique hardship and exceptions.

(a) *General*—(1) *Unique hardship.* If an applicant asserts unique hardship as a ground for the issuance of an export license under this part, he must specifically so state in his application and come forward with proof of the precise nature of the unique hardship experienced, that such hardship results from the imposition of short supply controls, and that there is no practicable alternative to the relief requested. In no case will the desire to sell at higher prices and thereby obtain greater profits be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the applicant.

(2) *Exceptions.* If an applicant seeks an exception, on grounds other than unique hardship, to quota limitations or other restrictions on export imposed for reasons of short supply, he must specifically cite this section in his application and state the precise reason(s) why he believes an exception is warranted. Each such application will be considered on a case-by-case basis and will be approved only in exceptional circumstances and only if the Office of Technology and Policy Analysis determines that granting of the requested exception would be consistent with the national interest and the purposes of the applicable short supply control program.

(b) *Standards for unique hardship.* In making a determination with respect to an application in which unique hardship is asserted, Office of Technology and Policy Analysis will consider, in addition to the general guidelines of paragraph (a) of this section, the following:

(1) Whether denial would cause a unique hardship to the applicant which can be alleviated only by granting an exception to the provisions of this part. While it is impracticable to set forth a definition of "unique hardship" which could envision all circumstances that might arise, consideration will be given to, but not necessarily limited to, such factors as:

(i) Ownership of material for which there is no practicable domestic market, by virtue of the location or nature of the material;

(ii) Potential serious financial loss to the applicant if not granted an exception;

(iii) Inability to obtain, except through import, an item essential for domestic use which is produced abroad from the commodity under control;

(iv) The extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(v) Possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(vi) Other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular commodity; and

(2) What effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

(c) *Standards for exceptions cases.* In making a determination with respect to an application for an exception, the Office of Technology and Policy Analysis will consider, in addition to the general guidelines of § 777.3(a)(2):

(1) Factors such as the following, to the extent that they are relevant to a particular case:

(i) Whether, for specific economic or technological reasons, the particular materials to be exported cannot be practicably processed or utilized within the United States;

(ii) The impact of the proposed export on the adequacy of domestic supply;

(iii) The probable impact on the domestic economy, including consumer and wholesale prices (nationally, regionally, or sectorally);

(iv) The extent to which the proposed country of destination engages in equitable trade practices with respect to the United States and treats the United States equitably in times of short supply;

(v) The extent to which the proposed export would advance or impair specific U.S. policy objectives (including those set forth in statutes or in any international agreement to which the United States is a party);

(vi) The extent to which the exemptions request arises from unique circumstances and is unlikely to be repeated;

(vii) The extent to which the circumstances giving rise to the exception request were within the control of the applicant; and

(viii) Any additional factors applicable to the particular commodity to be exported, as set forth elsewhere in this Part 777.

(2) What effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

[39 FR 35131, Sept. 30, 1974, as amended at 46 FR 5866, Jan. 21, 1981; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13066, Mar. 30, 1989]

§ 777.4 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

(a) *General.* Agricultural commodities of U.S. origin purchased by or for use in a foreign country and stored in the United States for export at a later date may be registered with the Department of Commerce under the provisions of this section for exemption from any quantitative limitations on export which may subsequently be imposed under section 3(2)(C) of the Export Administration Act for reasons of short supply.

(b) *Definitions.* For the purpose of this section the following definitions will apply:

(1) Agricultural commodities are deemed "purchased" by or for use in a foreign country if:

(i) Such commodities are in being and title thereto has been transferred to a foreign purchaser, or they are the subject of a binding contract for sale to a foreign purchaser and such contract describes the commodities by kind, grade, and quantity, contains a fixed price or basis for calculating price, and requires the commodities to be exported or delivered for export within a specified time; and

(ii) The purpose of the transaction is the creation of a reserve for later export to and use in a particular foreign country.

(2) The term "stored in the United States" means that the commodities are in storage, either on an identity preserved or commingled basis, in a particular storage facility in the United States.

(c) *Findings necessary for approval.* Applications to register such commodities may be approved by the Office of Export Licensing if that Office receives adequate assurances and in conjunction with the Department of Agriculture determines:

(1) That such commodities will eventually be exported;

(2) That neither the sale nor the export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact;

(3) That storage of such commodities in the United States will not unduly limit the space available for storage of domestically-owned commodities; and

(4) That the purpose of such storage is to establish a reserve of such commodities for later use within a specified foreign country, not including resale to or use by or within another country.

(d) *Procedures for filing registration applications.* (1) Applications to register agricultural commodities must be submitted by a person or firm subject to the jurisdiction of the United States who is acting as a duly authorized agent for the foreign purchaser. Submit applications, in duplicate, by letter addressed to: Processing Unit, Office of Export Licensing, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044. The letter shall:

(i) Describe the commodities to be registered by kind, grade and quantity;

(ii) Identify the specific storage facility where they are or will be stored and indicate whether they are or will be stored on an identity preserved or commingled basis;

(iii) State the length of time during which it is proposed to keep the commodities in storage in the United States;

(iv) Identify the foreign purchaser of the commodities and the foreign country in which they will ultimately be used;

(v) Set forth any other details that the applicant considers to be relevant to the proposed storage and export transactions; and

(vi) Contain the following certification: "I certify that the commodities described herein have been purchased as a reserve for export to (country) and use therein (not including resale to, or use by or within another country); that they will be stored in the facility identified herein; and that they will be exported to that country prior to the expiration of such period as may be approved by the Office of Export Licensing or, in the absence of quantitative limitations on export, within 60 days thereafter. I understand that, if the commodities have not been exported within the registration period approved by the Office of Export Licensing, they will be subject to any quantitative limitations on export that may be in effect at the time of proposed export; and that failure to export the commodities in accordance with the terms of the registration approval, or failure to comply with any other conditions of approval, may result in compliance action pursuant to section 787 of the Export Administration Regulations or any other applicable law."

(2) The following documents shall be submitted with the letter:

(i) Two copies of the contract of sale to the foreign buyer;

(ii) A statement, in duplicate, from an appropriate official representative of the government of the country in which the commodities are ultimately to be used, identifying the specific transaction to which the statement relates and describing the commodities by kind, grade, and quantity; stating that the commodities are a part of that country's agriculture commodity reserve (owned either by the government or private persons) for use in that country; and further stating that any necessary import authorizations or other documentation have been or will be issued for the entry of the commodities into that country;

(iii) An affidavit, in duplicate, from the operator of the facility where the commodities are to be stored, stating that storage in that facility of the commodities proposed to be registered will not limit his ability to meet anticipated storage needs of the facility's traditional customers, or if it will limit such ability, the extent of such limitation.

(e) *Preliminary advice.* Before submitting a formal application for registration, the applicant may consult with the Office of Export Licensing in person or by letter as to the likelihood of approval of an application for registration. The Office of Export Licensing will try to respond promptly and fully to such inquiries. However, a definitive determination on approval of an application can be made only on the basis of a fully documented application in light of all the facts and circumstances at the time of its filing.

(f) *Commerce action on registration applications.* Upon receipt by the Office of Export Licensing, a copy of each request and accompanying documentation will be forwarded to the Department of Agriculture for that Department's determination of whether the application meets each of the criteria for approval and its recomendation on whether the application should be approved. No application will be approved unless the Department of Agriculture determines that the criteria for approval have been met. If the application is approved, the applicant will be informed of such approval by letter, identifying the commodities, storage facility and country of destination; stating the period for which the registration is effective; and setting forth any other conditions of approval. The period for which storage is approved will not necessarily equal the period requested in the application. The following general conditions are applicable to *all* approved registrations:

(1) The applicant will be required to: (i) Have the operator of the storage facility place on the original warehouse receipt a legend reading: "These commodities have been registered with the Department of Commerce for export to (country) and may be removed from storage only for purposes of export to that country, unless other disposa permitted pursuant to advance writt authorization from the Office Export Licensing", and (ii) within t days of receipt of the notification registration approval, provide Commerce with two certified copies of t original warehouse receipt beari such legend.

(2) Registration approvals will be e fective for a specified period, and th registered commodities will be exem from quantitative limitations o export for reasons of short suppl only during such period.

(3) Commodities which are or hav been registered must be exporte within the period of such registratio or, in the absence of quantitative limitations on export, within 60 day thereafter. Should the foreign purhaser, for reasons beyond his control be prevented from exporting such commodities within the specified period, the Department will consider a request for extension of such period Such requests should be submitted i writing within the specified period, describe the circumstances which prevent the timely export of such commodities, and state when such commodities will be exported.

(4) Unless otherwise permitted by the Department of Commerce, commodities which are or have been a any time registered may be disposed of only by exporting to the country stated in the registration for use i that country.

(5) Failure to export commoditie which are or have been registered a required by this section, the export or reexport of such commodities to a country other than that approved i the registration, or failure to comply with any other condition attached to the registration of these commoditie by the Department of Commerce may result in compliance action pursua to Part 787 of the Export Administration regulations or any other applicable law.

(g) *Application for extension of registration.* An application for extensio of the period for which registered storage approved was initially granted shall be made at least 30 days prior to expiration of that period. Such application shall be made by letter, in du plicate, and shall make reference to the original storage approval and state the reason or reasons why the extension is requested. Accompanying documentation, in duplicate, shall be submitted as necessary to update that submitted with the original application. The mere filing of an application for extension will not extend the original period, and if approval of extension is not granted before expiration of the original period, such period shall lapse in accordance with the terms of the original registration.

(h) *Export of registered commodities.* Upon export of commodities that are or have been registered, the person receiving storage approval shall report the export to: Processing Unit, Reports and LRecords Unit, Office of Export Licensing, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044: The report shall be by letter citing the storage approval and date issued, and certifying that the commodities have been withdrawn from registered storage and exported. The report shall also transmit: (1) A copy of the on board bill of lading and (2) an independent inspector's certificate of analysis at the port of export attesting to the quantity and grade of the commodity being exported. If the quantity (less normal shrinkage) and grade do not conform to that shown on the warehouse receipt and the registered storage approval, appropriate documentation establishing the continuity of movement from warehouse to exporting carrier must also be transmitted. Such report shall be submitted within 15 calendar days of export except that if partial shipments are made the report and accompanying documentation may be held until final shipment has been made and then submitted within 15 calendar days of the final shipment.

(i) *Procedure for exporting registered commodities during a period when short supply controls are in effect.* (1) Should short supply export controls be imposed for a commodity being stored in the United States under a valid registered storage approval, the person to whom such approval was granted shall file Form ITA-622P, Application for Export License, in accordance with the procedure set forth in Part 772 of this chapter, except that no accompanying documentation is required. The applicant shall cite in Item 15, "Additional Information," the relevant registered storage approval issued by the Office of Export Licensing and shall also state the quantity of the commodities covered by the registered storage approval already exported or which will be exported pursuant to the terms of any Saving Clause contained in the announcement imposing short supply export controls. Upon verification that the registered storage approval is valid, the Office of Export Licensing will issue a validated export license for the quantity authorized in the registered storage approval, less any quantities previously exported or in process of being exported under any Saving Clause, without regard to any quantitative short supply export limitations which are then in effect. The license shall be valid through the date specified thereon.

(2) In addition to the report required under § 777.4(h), the person to whom an export license has been issued under this provision shall report each export pursuant to such license, within 60 days of the final shipment under the license, to: Processing Unit, Reports and Records Unit, Office of Export Licensing, U.S. Department of Commerce, P.O. Box 273 Washington, DC 20044. The report shall be by letter, citing the applicable registered storage approval, and enclosing:

(i) A statement from an appropriate official of the government of the importing country attesting to the fact that the commodities—which must be identified by kind, grade and quantity—have been imported into that country for use therein and (ii) the validated export license with the reverse side completed so as to record the shipment data and signature of the licensee or his duly authorized agent.

(j) *Effect of other provisions.* Unless inconsistent with the provisions of this section, all the provisions of the Export Administration regulations, including Parts 787 and 788, apply equally to the procedure set forth in this section. Attention is called particularly to the provisions of § 787.13 under which pertinent records must be kept and made available for inspection and to the administrative and criminal sanctions in § 787.13 for violation of the Export Administration Act of 1979, as amended, or any order, regulation or license issued thereunder.

[43 FR 25669, June 14, 1978, as amended at 44 FR 30322, May 25, 1979; 45 FR 59300, Sept. 9, 1980; 45 FR 63837, Sept. 26, 1980; 45 FR 84027, Dec. 22, 1980; 47 FR 5210, Feb. 4, 1982; 47 FR 15113, Apr. 8, 1982; 50 FR 41133, Oct. 9, 1985; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 777.5 [Reserved]

§ 777.6 Petroleum and petroleum products.

The following provisions supplement the regular requirements for submitting an export license application (see Part 772).

(a) *Consignee in country of ultimate destination.* Where shipments are contemplated to be made to consignees in more than one country, the phrase "Various—see attached list" shall be entered in Item 7 of Form BXA-622P (Rev. 7-81).

(b) [Reserved]

(c) *Definitions.* For the purposes of this section, crude oil is defined as follows:

Crude oil. A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

(d) *Issuance of export licenses.* Petroleum Commodity Groups, as identified in the following paragraphs, are defined in Supplement No. 2 to Part 777. Submit each application for a validated license to export a commodity from one of these groups to: Processing Unit, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D 20044. Include with each license appl cation the documentation required b § 777.6(e). Applications will be consi ered subject to the appropriate prov sions of this section.

(1) *Group A* The export from th United States of crude petroleum, in cluding reconstituted crude petroleum tar sands and crude shale oil is permitted only as provided in this paragraph. Applications to export Group A commodities shall include evidence of a order as described in § 772.6, and the documentation described in paragraph (e) (1) and (2) of this section. Different situations exist depending upon the source of the crude oil and the nature of the proposed export transaction. Applications will be approved if it is established to the satisfaction of the Department of Commerce that the export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act *and one* of the following conditions i met:

(i) *Alaskan North Slope Crude.* Pursuant to section 7(d) of the Export Administration Act of 1979, Alaskan North Slope Crude Petroleum may be exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the U.S., provided:

(A) Such exchange will result through convenience or increased efficiency of transportation, in lower prices for consumers of petroleum products in the U.S.;

(B) Within 3 months following the initiation of such exchange, the transaction results in (*1*) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an exchange, and (*2*) not less than 75 percent of such savings in costs must be reflected in wholesale and retail prices of products refined from such imported crude oil.

NOTE: Paragraphs 777.6(d)(1) (ii) through (vii) below apply to all crude oil, including Alaska North Slope crude oil.

(ii) *Temporary exports.* The Group A commodity is being exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state, and shall re-enter the United States in the same form.

(iii) *Equivalent importation.* The export will result directly in the importation into the United States of an equal or greater quantity of that same commodity. This kind of transaction is carried out for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state.

(iv) *Naval Petroleum Reserve Origin.* The Group A commodity to be exported meets the following conditions:

(A) The commodity was produced from a Naval Petroleum Reserve;

(B) The commodity has not been and will not be transported by pipeline over a Federal right-of-way granted pursuant to section 28(u) of the Mineral Leasing Act of 1920; *and*

(C) The President makes and publishes an express finding that the export:

(*1*) Will not diminish the total quantity or quality of petroleum available to the United States;

(*2*) Is in the national interest; *and*

(*3*) Is in accord with the Export Administration Act of 1979.

(v) *Transported over rights-of-way granted under the Mineral Leasing Act.* The Group A commodity has been or will be transported by pipeline over rights-of-way granted under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), and the President:

(A) Makes and publishes an express finding that the export:

(*1*) Will not diminish *the total quantity or quality* of petroleum available to the United States;

(*2*) Will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners;

(*3*) Will be made only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and

(*4*) Is in the national interest and in accordance with the provisions of the Export Administration Act; *and*

(B) Reports the finding described in (A) above to the Congress as an energy action as defined in section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) and either:

(*1*) A 60-calendar day period during which both Houses of Congress are in continuous session, as defined in section 551 of that Act, has elapsed and neither House has passed a resolution disapproving the findings; or

(*2*) Each House of Congress has passed a resolution approving such finding or affirmatively stating in substance, that such House does not object to such findings.

(vi) *Corresponding importation of the same commodity.* The Group A commodity and was not and will not be transported by pipeline over rights-of-way granted pursuant to section 28(u) of the Mineral Leasing Act of 1920, and the export is part of an overall transaction which:

(A) Will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of the same commodity;

(B) Will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs to refiners;

(C) Will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened;

(D) Will be in the national interest;

(E) Will be in accordance with the Export Administration Act and the purposes of the Energy Policy and Conservation Act;

(F) For compelling economic or technological reasons that are beyond the control of the applicant, the commodity cannot reasonably be processed within the United States; and

(G) The Group A commodity to be imported into the United States would not be available for import if the export had not taken place.

(vii) *Corresponding importation of refined commodities.* The Group A commodity was not and will not be transported by pipeline over rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, and will be exported as part of an overall transaction which:

(A) Will result directly in the importation into the United States of a quantity and quality from other Petroleum Commodity Groups that is not less than the quantity and quality of commodities that would be derived from the refining of the commodity for which an export license is sought;

(B) The commodities imported into the United States will be sold at prices no higher than the lowest price at which they could have been sold if the export had not taken place and the Group A commodities had been refined at the nearest U.S. refinery capable of processing it within a reasonable period of time; and

(C) For compelling economic or technological reasons that are beyond the control of the applicant, the Group A commodity cannot reasonably be processed within the United States.

(viii) *Exports to Canada for consumption or use therein.* The Group A commodity and was not and will not be transported by pipeline over rights-of-way granted pursuant to Sec. 203 of the Trans-Alaska Pipeline Authorization Act and is being exported to Canada for consumption or use therein.

(ix) *Exports from Alaska's Cook Inlet.* The Group A commodity was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not and will not be transported by a pipeline over a Federal right-of-way granted pursuant to section 28(u) of the Mineral Lands Leasing Act or by section 203 of the Trans-Alaska Pipeline Authorization Act.[1]

(x) *Exports of certain Alaska crude oil to Canada.* The Group A commodity will be exported under the following conditions:

(A) The commodity is domestically produced, has been transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), and is being exported to Canada for consumption, in Canada;

(B) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Department of Commerce will determine, in consultation with the Maritime Administration, whether such transportation is "ocean" transportation; *and*

(C) The export complies with the provisions contained in paragraph (f) of this section.

(2) *Groups B, C, D, E, F, G, K, L, M, N, and Q.* The export of refined petroleum products listed in Sppplement No. 2 to Part 777, which are not subject to paragraph (d)(1) or (d)(3) of this section, is permitted under the General Licenses G-NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, OR GUS, subject to the limitations set forth in Part 371.

(3) *Petroleum and petroleum products produced from the Naval Petroleum Reserves or which have been exchanged therefor.* (i) The export of those commodities listed in Supplement No. 3 to Part 777 which were produced or derived from the Naval Petroleum Reserves or which became available for export as a result of an exchange of a Naval Petroleum Reserves-produced or derived commodity is prohibited pursuant to the provisions of 10 U.S.C. 7430(e) as provided in § 777.6(d)(1).

(ii) Applications for a validated license to export those commodities listed in Supplement No. 3 to Part 777 which were produced or derived from the Naval Petroleum Reserves, or which became available for export as a result of an exchange for a Naval Petroleum Reserves-produced or derived commodity, other than a commodity belonging to Petroleum Commodity Group A which is subject to the provisions of § 777.6(d)(1), will be considered under the provisions of this paragraph if submitted with evidence of an order, as described in § 772.6, and the supporting documentation described in § 777.6(e) (4) and (5). A validated license to export such a commodity may be issued only if it is demonstrated to the satisfaction of the Department of Commerce[2].

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[1] On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

(A) That the commodity will be exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or

(B) That the commodity is being exported temporarily for convenience or increased efficiency of transportation across parts of an adjacent foreign state and will re-enter the United States, or if

(C) The President has made and published an express finding that such export will not diminish the total quality or quantity of petroleum available to the United States and that such export is in the national interest and is in accord with the Export Administration Act of 1979.

(e) *Documentation.* An application for a validated license to export petroleum and petroleum products must be submitted on Form ITA-622P, Application for Export License. The exporter *must submit* with the application, documentary evidence of an order as described in § 772.6(a) (1) and (2), and one or more to the following documents, as required by the appropriate paragraph of § 777.6(d).

(1) A sworn affidavit, signed by an authorized representative of the exporter, which demonstrates (in conjunction with such supporting evidence as may be required by the Department of Commerce) that the applicable criteria of § 777.6(d)(1) are satisfied;

(2)(i) An end-use statement by the applicant in affidavit format indicating the name, location and type of business of the end-user, and the nature of the end-use; and

(ii) A published technical data sheet (unless one has previously been submitted) or independent inspector's certificate of analysis of the product to be exported which clearly indicates that the commodity is properly classifiable under Petroleum Commodity Group N.

(3) A sworn affidavit, signed by the exporter or his authorized representative, together with such supporting evidence as may be appropriate, setting forth either:

(i) The facts necessary to establish that the conditions prescribed in § 777.6(d)(3)(ii)(A) or (B) have been met; *or*

(ii) The reasons why the exporter believes that the President should be asked to make and publish an express finding that the proposed export will not diminish the total quantity or quality of petroleum available to the United States, and that such export is in the national interest and is in accordance with the Export Administration Act of 1979.

(4) If the Export Control Commodity Number preceding the commodity description in the Commodity Control List (Supplement No. 1 to § 799.1) is followed by the code letter "A," include the documentation required by Part 775 of these regulations for the country of ultimate destination.

(f) *Exports of Certain Alaska Crude Oil Pursuant to § 777.6(d)(1)(x).* An average of no more than 50,000 barrels per day of Alaska crude oil transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act for use or consumption in Canada will be authorized as follows:

(1) Authorization to export such Alaska crude oil will be granted on a quarterly basis. Applications will be accepted by the Office of Export Licensing *no earlier* than two months prior to the beginning of the calendar quarter in question, but must be received *no later* than the 25th day of the second month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than February 25.

(2) The quantity stated on each application must be the total number of barrels for the quarter—not a per day rate. This quantity must not exceed

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[2] Natural gas and liquefied natural gas (L.N.G.), and synthetic natural gas commingled with natural gas require export authorization from the U.S. Department of Energy. See § 770.10(g).

50,000 barrels times the number of calendar days in the quarter.

(3) Each application shall include support documents providing evidence that the applicant has either:

(i) Title to the quantity of barrels stated in the application *or*

(ii) A contract to purchase the quantity of barrels stated in the application.

(4) The quantity of barrels authorized on each validated license for export during the calendar quarter will be determined by the Office of Export Licensing as a prorated amount based on:

(i) The quantity requested on each license application; *and*

(ii) The total number of barrels that may be exported by all license holders during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(5) Applicant may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, *provided* that the validity period of none of the affected licenses has expired.

(6) The Office of Export Licensing will carry forward any portion of the 50,000 barrels per day quota that has not been allocated during a calendar quarter, *except that* no unallocated portions will be carried over to a new calendar year. The unallocated volume for a calendar quarter will be added, until expended, to the quotas available for each quarter through the end of the calendar year.

(g) *Validity period.* A license issued pursuant to this § 777.6 is valid for one year from the last day of the month during which it is issued.

(h) *Confidentiality.* Any documentation required from the exporter under this section will be treated as confidential information under section 12(c) of the Export Administration Act of 1979.

(i) *Congressional review.* An application to export more than 250,000 barrels of refined petroleum products to any destination in a single fiscal year will be subject to a 30-day processing delay. Applications *not* subject to this reporting requirement include:

(1) Foreign origin products which are in-transit through the United States, and have not been entered for consumption.

(2) Temporary exports where the product will move in-transit or to temporary storage outside the United States and will be returned to the U.S.

(3) Product exchanges in equal quantity for efficiencies of transportation.

(4) Processing of products (including fractionation) with all the products to be returned to the United States.

(Approved by the Office of Management and Budget under control numbers 06 0154 and 0625-0155).

[46 FR 49111, Oct. 6, 1981, as amended at 4 FR 57031, Nov. 20, 1981; 47 FR 15114, Apr. 8, 1982; 50 FR 26145, June 25, 1985; 50 FR 41133, Oct. 9, 1985; 51 FR 12839, Apr. 1 1986; 51 FR 20254, June 4, 1986; 51 FR 25360, July 14, 1986; 51 FR 40159, Nov. 1986; 52 FR 2106, Jan. 20, 1987; 52 FR 281 July 28, 1987. Redesignated at 53 FR 37 Sept. 28, 1988 and amended at 54 FR 13 and 1351, Jan. 13, 1989; 54 FR 6644, Feb. 1 1989; 54 FR 13056, Mar. 30, 1989; 55 FR 10053, Mar. 19, 1990; 55 FR 25821, June 2 1990]

§ 777.7 Unprocessed western red cedar.

(a) *General.* The export from the United States to any destination, including Canada, of unprocessed western red cedar as defined below is prohibited except pursuant to a validated export license issued by the Office of Export Licensing.

(b) *Definitions.* When used in this section, the following terms have the meanings indicated.

(1) *Unprocessed western red cedar:* Western red cedar (thuja plicata) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as listed in Supplement No. 4 to this part, but excluding:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better.

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; and

(v) Shakes and shingles.

Commodities excluded above are referred to as "processed western red cedar".

(2) *Federal and state lands.* Federal and state lands excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) *Substitution.* Any act, including but not limited to the sale, harvesting, transfer, or use of unprocessed western red cedar, which would replace direct or indirectly unprocessed western red cedar harvested from Federal or State lands with western red cedar harvested from any other lands in order to evade quota restrictions imposed under this section.

(4) *Contract harvester.* Any person who, on October 1, 1979, had an outstanding contractual commitment to harvest western red cedar timber from State or Federal lands and who can show by his previous business practice or other means that he intended to export or to sell into or for export in unprocessed form all or part of the commodities to be harvested.

(5) *Inventory owner.* Any person who, on October 1, 1979, held title to an inventory of unprocessed western red cedar harvested from State or Federal lands and can show that it was under contract to be exported or destined to be sold for or into export.

(6) *Producer.* Any person engaged in a process which transforms an unprocessed western red cedar commodity into another unprocessed western red cedar commodity (e.g., a saw mill operator).

(7) *Exporter.* Any person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the commodities out of the United States.

(c) *Export quotas.* Annual quotas for the export of unprocessed western red cedar harvested from state and Federal lands, produced from commodities so harvested, or which became available for export through substitution for such commodities, are established as follows:

(1) For the fiscal year October 1, 1979–September 30, 1980: 30 MMBF (million board feet scribner);

(2) For the fiscal year October 1, 1980–September 30, 1981: 15 MMBF (million board feet scribner);

(3) For the fiscal year October 1, 1981–September 30, 1982: 5 MMBF (million board feet scribner).

Thereafter the export of unprocessed western red cedar harvested from State and Federal lands is prohibited.

Unprocessed western red cedar harvested from private lands, including Indian lands, or in Alaska, or produced from commodities so harvested, is subject to validated licensing but is exempt from the foregoing quota restrictions. Processed western red cedar irrespective of its origin is exempt from both quota restriction and validated licensing.

(d) Reporting of unprocessed western red cedar exported on or after October 1, 1979.

Each person who exported from the United States any quantity of unprocessed western red cedar during the period October 1, 1979 through April 16, 1980 is required to submit a report of such exports. This report must be submitted whether or not the exporter intends to apply for a share of export quotas or a validated license pursuant to the provisions of this section. Such reports should be submitted on Form DIB-669P, Past Participation Statement, in duplicate, to the Processing Unit, Reports and Records Unit, Office of Export Licensing, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044. These reports must be received by the Bureau of Export Administration not later than 5 p.m. EST April 23, 1980. Each Form DIB-669P submitted pursuant to this subsection must show all quantities of unprocessed western red cedar exported by the submitter during the period October 1, 1979–April 16, 1980, broken down by country of destination and month of export. Attached to each Form DIB-669P must be a statement, in affidavit format, listing each separate export shipment of unprocessed western red cedar commodities made during the stated time period and must show the following information with respect to each such shipment: exporter, consignee, quantity, in board feet scribner, of each separate commodity listed in supplement No. 4 to Part 777 and whether the commodity was harvested from State or Federal lands. Where the exporter was not the harvester or the producer of the commodity exported, the affidavit must state who the harvester or producer was or, alternatively, from whom the exporter purchased the commodities. Each such report must be accompanied by a copy of the Shipper's Export Declaration filed upon export of the commodity together with both an affidavit from the harvester or producer of the commodity which was exported, identifying its harvesting origin with sufficient specificity to enable the Bureau of Export Administration to determine whether it was harvested from Federal or State lands, and a certification from a recognized log scaling and grading bureau showing the quantity in board feet scribner of the commodity which was exported, and each separate brand, tag and/or paint marking which appeared on any log in such export shipment. In the event one or more of these documents cannot be obtained, the exporter should file an affidavit providing a full explanation as to why the particular document is not available and alternative evidence which establishes to the satisfaction of the Bureau of Export Administration the harvesting origin of the commodities exported or those from which the exported commodities were produced. Where the exporter is unable to establish to the satisfaction of the Bureau of Export Administration that the exported commodities were not harvested from, or produced from timber harvested from, State or Federal lands, the quantities exported will be presumed to be subject to the export quotas and will be charged against such quotas and any allocations thereunder which the exporter or other person who previously held title to the exported commodities may subsequently receive.

(e) *Applications to participate in the allocation of export quotas.* To participate in the allocation of an export quota for the fiscal year which begins on October 1, each applicant must file either the affidavit concerning prior exports required under paragraph (d) of this section or an affidavit stating that he has made no exports during the period October 1, 1979-April 16, 1980, of the unprocessed western red cedar commodities listed in Supplement No. 4 to this part. In addition, he must file an application for a quota share under one or more of the categories listed below specifying under which category or categories he is applying. Such application must actually be received by the Bureau of Export Administration no later than 5:00 p.m. EDT on the preceding September 15 or, if the latter is not a working day, on the first working day thereafter. Applications received subsequent to that date and time will not be considered for participation in the export quota to be allocated for the fiscal year beginning on the following October 1.

(1) *Past participation in exports.* Each applicant for a share of an export quota on the basis of a prior history of exports must submit Form DIB-669P, Past Participation Statement, in duplicate, listing his exports of unprocessed western red cedar commodities by commodity, country of destination, and month of export during the eighteen-month period April 1, 1978-September 30, 1979. If the applicant is already required to submit Form DIB-669P pursuant to paragraph (d) of this section because he exported unprocessed western red cedar during the period October 1, 1979 through April 16, 1980, he should not combine the two reports but should submit a separate Form DIB-669P, in duplicate, to claim a quota share based on his past participation in exports. Exporters are advised that the Bureau of Export Administration intends to compare the aggregates of all Past Participation Statements received with the official Bureau of the Census export statistics for the commodities, months, and countries of destination and, in appropriate cases, to require exporters to submit for audit documentation substantiating the exports claimed on their Past Participation Statements. Exporters should accordingly have in their possession documentation such as copies of Shipper's Export Declarations, bills of lading, letters of credit, commercial invoices, and similar material which

will substantiate their claimed history of exports.

(2) *Ownership of inventories of unprocessed western red cedar.* Each applicant who seeks a share of an export quota on the basis of owning an inventory of unprocessed western red cedar, must submit the following documentation in duplicate:

(i) An affidavit listing separately by commodity and in board feet scribner all inventories of unprocessed western red cedar harvested from, or produced from commodities harvested from, State or Federal lands and destined for export to which he had title as of October 1, 1979, to which he will still have title and which will remain unexported as of the beginning (October 1) of the fiscal year for which he is seeking a quota allocation. The affidavit should exclude all stocks of unprocessed western red cedar which were not harvested from State or Federal lands and all stocks which were claimed in seeking a share of a prior year's export quota. In those instances where the applicant was neither the harvester nor the producer of the commodities, the affidavit should identify the harvester(s) and/or producer(s) and the quantities in board feet scribner allocable to each, and should be accompanied by similar affidavit(s) as to origin from such harvesters and/or producers;

(ii) A certificate of inspection by a log scaling and grading bureau recognized by the State or Federal agency having jurisdiction over the land where the timber was harvested, stating the volume of the cedar in board feet scribner and listing each separate brand, tag or paint marking appearing on any log in the export-committed inventory on which his application for a quota share is based, or on any log from which the unprocessed western red cedar commodities were produced; and

(iii) A copy of the signed export sales contract(s) committing the unprocessed western red cedar for or into export during the fiscal year for which a share of the export quota is sought.

(3) *Contractual obligations to harvest western red cedar from State or Federal lands.* A contract harvester who seeks a share of an export quota on the basis of having entered into a contract, prior to October 1, 1979, to harvest western red cedar from State or Federal lands with the intention of selling it for or into export must submit the following documentation:

(i) An affidavit listing, by Federal or State agency with which it has been entered into, the following:

(A) Each of the applicant's separate harvesting contracts which was valid as of October 1, 1979, and which has not yet been completed;

(B) The estimated volume, in board feet scribner, of unharvested western red cedar stumpage remaining under each contract as of October 1, 1979 and as of the date of application;

(C) The volume of such western red cedar stumpage which the applicant intended on October 1, 1979, and still intends, as of the date of this affidavit, to sell for or into export during the fiscal year for which the application has been filed;

(D) The date on which the contract was entered into;

(E) The date it expires; and

(F) The volume of cedar stumpage under that contract which the applicant expects to harvest during the fiscal year which begins on the following October 1, and during each succeeding fiscal year in which he expects to harvest under that contract.

(ii) A copy of each harvesting contract listed under paragraph (e)(3)(i) of this section; and

(iii) A copy of each export sales contract entered into prior to October 1, 1979 committing his then unharvested stumpage into export, or alternative evidence of his intent to export that stumpage (e.g. an affidavit specifying the quantity in board feet scribner of western red cedar harvested by the applicant from State or Federal lands and the proportion thereof which the applicant sold for or into export during the period October 1, 1977–September 30, 1979.

(4) *Hardship and exceptions applications.* Each applicant for a share of an export quota on the grounds of unique hardship or other exceptional circumstances must file a request therefor accompanied by a full statement, in affidavit format, of the precise nature of the unique hardship or exceptional

circumstances experienced. The affidavit must explain how the hardship or exceptional circumstances were caused by the imposition of these controls, and demonstrate that there is no practicable alternative to the relief requested, i.e., the granting of a share of the quota for the export of unprocessed western red cedar. In addition to the general criteria for unique hardship set forth in § 777.3, the Bureau of Export Administration will consider the extent to which the unprocessed western red cedar covered by the application has been subjected to primary manufacture.

(5) *Alternate documentation.* Where any document required under paragraph (e)(1), (2), (3) or (4) of this section is not available or cannot be furnished, the applicant may submit in lieu thereof the best alternate evidence available, together with an affidavit describing the special circumstances in particularity. After reviewing such alternate evidence and explanation, the Bureau of Export Administration will consider the extent to which such alternate evidence may be accepted as a basis for allocating a quota share.

(f) *Allocation of export quotas.* (1) The Bureau of Export Administration will review the applications submitted under paragraph (e) of this section for a share of the export quota and, based on that review, will determine what proportion of the fiscal year's quota specified in paragraph (c) of this section to allot to each of the four categories set forth under paragraph (e) of this section. After determining the quantity to be allocated to each of the four categories discussed in paragraph (e) of this section, quota shares will be allocated to successful applicants within each of the first three categories on a proportionate basis and, after making any adjustments required by paragraph (f)(3) of this section, written notification thereof will be mailed as soon as possible to each person receiving a quota share. Quota shares under the hardship and exceptions category will be allocated after a case by case review of each presentation and in accordance with the merits of each case. Persons applying under the hardship and exceptions category will also be notified in writing as to whether their applications have been successful.

(2) Quota allocations will be made without restriction as to the particular unprocessed western red cedar commodity involved and will entitle the allocation holders to apply for licenses to export to any destination other than one to which exports generally are restricted under other provisions of these regulations.

(3) Each person who exported a quantity of western red cedar subject to quota restriction during the period October 1, 1979–April 16, 1980, which was in excess of his quota allocation for the period October 1, 1979–September 30, 1980, will have such excess exports deducted from his quota allocation in FY 1981 and in subsequent fiscal years until such excess exports have been totally absorbed. The quantities so deducted from exporters' allocations will then be re-allocated among other persons receiving quota shares so as to permit the issuance of licenses in each fiscal year for up to the total statutory quota.

(4) Requests by quota holders to extend the validity of their annual quotas beyond the fiscal year to which they relate will not be considered. Any portion of a quota share remaining unlicensed as of close of business on September 30, each year will expire and be lost.

(g) *Issuance of export licenses.* An application for a validated license to export unprocessed western red cedar will be considered by the Office of Export Licensing as set forth below. However, no application will be considered prior to receipt from the applicant of either the documentation reporting prior exports required under paragraph (d) above or an affidavit stating that no such exports were made.

(1) *Unprocessed western red cedar harvested from private lands or in Alaska.* An application for a validated license to export an unprocessed western red cedar commodity listed in Supplement No. 4 to this part which was harvested from lands other than Federal or State lands will be considered for approval without quantitative limitation if submitted with supporting

documentation as required by paragraph (h) (1) or (3) of this section.

(2) *Unprocessed western red cedar harvested from State or Federal lands.* An application for a validated license to export an unprocessed western red cedar commodity listed in Supplement No. 4 to this part will be considered, subject to quota limitation, if submitted with supporting documentation as required by paragraph (h) (2) or (3) of this section. Each license issued will be charged against the quota allocation of the exporter or of another person or persons who hold(s) a quota allocation. A quota allocation may only be so charged with the written consent of the quota holder and only if the quota holder now holds or previously held title to, the particular commodities to be exported. Where necessary to cover an entire shipment, portions of that shipment may be charged to more than one quota allocation.

(h) *Documentation.* An application for a validated license to export an unprocessed western red cedar commodity listed in Supplement No. 4 to Part 777 must be submitted on Form ITA-622P, Application for Export License, and be accompanied by the documentation listed below. Where more than one affidavit is required these affidavits may be combined in a single document.

(1) *Unprocessed western red cedar harvested from lands other than Federal or State lands.* (i) A sworn affidavit by the applicant stating that the commodities listed on the application were not harvested from State or Federal lands, were not produced from commodities harvested from State or Federal lands, and did not become available for export through substitution of commodities so harvested or produced. If the applicant is not the harvester or producer of the commodities to be exported, the affidavit must identify the harvester or producer and must be accompanied by an identical affidavit from the harvester or producer, and from each intermediate party or parties who held title to the commodities between harvesting and purchase by the applicant.

(ii) A certificate of inspection issued by a log scaling and grading bureau recognized by both the United States Forest Service and the state within which the cedar was harvested which:

(A) Specifies the quantity in board feet scribner of each separate unprocessed western red cedar commodity listed on the application; and

(B) Lists each different brand, tag and/or paint marking which appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed lumber was produced.

Where necessary to cover the entire shipment, more than one certificate of inspection may be submitted.

(2) *Unprocessed western red cedar commodities harvested from State or Federal lands.* (i) A certificate of inspection issued by a log scaling and grading bureau recognized by both the United States Forest Service and the state within which the cedar was harvested which:

(A) Specifies the quantity in board feet scribner of each separate unprocessed western red cedar commodity listed on the application; and

(B) Lists each different brand, tag and/or paint marking which appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed lumber was produced.

Where necessary to cover the entire shipment, more than one certificate of inspection may be submitted.

(ii) A letter signed by either the applicant or a person who previously held title to the commodities to be exported stating that the signer, if not the applicant, previously held title to the commodities, and requesting that the quantity of the commodities to be exported be charged against the signer's quota share. Where necessary to cover the entire shipment, more than one such letter may be submitted. However, a letter from any person other than the applicant or a person who previously held title to the commodities to be exported will not satisfy this requirement.

(3) Exception for established trade practices or other reasons for non-availability of particular documentation.

Where any document required under paragraph (h) (1) or (2) of this section is not available or cannot be furnished, the applicant may submit in lieu thereof the best alternate evidence available together with an affidavit describing the special circumstances in particularity. The Office of Export Licensing will consider the submission and will then either waive the particular documentation requirement and process the application without it, return the application without action suggestion alternate documentation to satisfy the documentation requirement, or deny the application.

(i) *Export licenses for western red cedar.* (1) A license issued pursuant to this § 777.7 is valid for one year from the last day of the month during which it is issued.

(2) If the purchaser(s) or ultimate consignee(s) is unknown at the time of submission of the application for an export license, enter "Various" in Items 6, 7, or both, as appropriate, of Form ITA-622P.

(3) Any exporter, using a validated license with "Various" in Items 6 or 7 will be required to provide the specific information following each export shipment.

(j) *Recrediting of unused quota shares.* In the event that a validated license cannot be fully utilized, the Bureau of Export Administration will consider recrediting an individual quota share with the unused quantity of such quota share against which the license was charged, but only during the fiscal year in which the quota share was originally issued. A request for such recrediting should contain an explanation as to why the license was not fully used and should be accompanied by the license, with the reverse thereof properly annotated and certified to show all shipments made against that license.

(k) *Shipping tolerance.* A shipping tolerance of five percent in board feet scribner is allowed over the unshipped balance of a commodity listed on a validated export license. This tolerance applies only to the quantity remaining unshipped on a license against which more than one shipment is made and not to the original quantity authorized by such license. However, the tolerance would apply to the entire quantity authorized by a license against which only one shipment is made. (See § 786.7)

(l) *Confidentiality.* Any documentation required and submitted under this section is deemed confidential information under section 12(c) of the Export Administration Act of 1979.

(m) *Enforcement.* All persons subject to the provisions of this section are placed on notice that any violations of the provisions of this section will be subject to the civil, criminal, and administrative penalties authorized by section 11 of the Export Administration Act of 1979 and section 387 of the Export Administration Regulations. Such sanctions include suspension of export privileges; fines up to five times the value of the exports involved or $50,000 whichever is greater; imprisonment for not more than five years; or all three. All persons subject to the provisions of this section are further advised that the Office of Industrial Resource Administration intends to check compliance with the provisions of this section by comparing the accuracy of documentation submitted under this section with copies of Shipper's Export Declarations for the controlled commodities filed on and after October 1, 1979, with the official export statistics of the Bureau of the Census, by on-site inspections at ports and log yards, and by such other means as may be deemed appropriate.

(The reporting requirements contained in paragraph (h) were approved by the Office of Management and Budget under control number 0625-0153.)

[45 FR 21622, Apr. 2, 1980, as amended at 4 FR 59303, Sept. 9, 1980; 50 FR 41133, Oct. 1 1985; 51 FR 25360, July 14, 1986; 51 FR 40159, Nov. 5, 1986; 52 FR 28136, July 2 1987; 52 FR 29353, Aug. 6, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989; 5 FR 13056, Mar. 30, 1989]

§ 777.8 Petitions for monitoring or controls.

(a) *Scope.* This section sets forth regulations governing the filing of petitions and other procedures in seeking the imposition of monitoring or controls under section 7(c) of the Export Administration Act of 1979.

(b) *Eligibility for filing petitions.* Any entity, including a trade associa tion, firm or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may submit a written petition to the Office of Technology and Policy Analysis requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such materials.

(c) *Content of petitions.* Each petition must be submitted in five copies, must state that it is being filed under this section and must contain the following:

(1) The name and description of the entity filing the petition;

(2) Its address and telephone number;

(3) The name, address and telephone number of a person to contact for further information on the petition;

(4) The identification, by number and description from *Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States,* of the material or materials which are the subject of the petition;

(5) A detailed description of the basis upon which the petitioner asserts that it is representative of an industry or a substantial segment of an industry which processes the metallic materials for which the petition is submitted;

(6) Whether export monitoring or controls, or both, are sought by the petitioner;

(7) Whether the petitioner requests a public hearing or hearings to be held;

(8) Reasonably available information showing that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply;

(9) Reasonably available information that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or the domestic shortage may be related to exports;

(10) A specific description of the relationship between the price increase or the domestic shortage and exports of the material;

(11) How the increase in the domestic price or the domestic shortage has or may have a significant adverse impact on the national economy or any sector thereof;

(12) To the extent possible, a statement describing any alternatives to export monitoring or export controls which would assist in alleviating the perceived problem;

(13) Any other forms of relief which the petitioner may be seeking from the Department of Commerce or any other federal or state agency;

(14) Any other information which the petitioner believes should be taken into consideration in reaching a decision on its petition; and

(15) If the material or materials which are the subject of the petition have been considered in a prior proceeding under this section and § 377.9 within six months of the filing of the petition, the petitioner must explain in detail all significantly changed circumstances which have occurred since the date of the decision in the prior proceeding which argue in favor of reconsideration of the matter.

(d) *Place of filing.* Petitions under this section may be filed by personal delivery during normal Department of Commerce business hours or by mail, to: Short Supply Program, Office of Technology and Policy Analysis, Bureau of Export Administration, Room H-1618, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Petitions will be date-stamped upon receipt in the Office of Industrial Resource Administration. The date stamped on the petition will be the filing date for the petition.

(e) *Acceptance of petition.* No document purporting to be a petition under this section shall be accepted unless the petitioner is qualified to file a petition under these regulations and the contents of the document are in substantial compliance with this section. If both of these requirements are not met, the document will be returned to the petitioner within 15 days of the filing date with an explanation as to why the petition has been found not to meet the requirements of this section. A petition may be resubmitted when the deficiencies have been corrected. A petition which is resubmitted will be treated as a new petition under this section.

(f) *Publication in Federal Register.* The Office of Technology and Policy Analysis will publish a notice of receipt of each accepted petition in the FEDERAL REGISTER within 15 days of the filing date of the petition. The notice will identify the name of the material or materials which are the subject of the petition, and the appropriate Schedule B number, and will state whether the petitioner has requested that export monitoring or controls, or both, be imposed with respect to the material or materials, and whether the petitioner has requested a public hearing. Interested parties will be given 30 days from the date the notice is published in the FEDERAL REGISTER to submit to the Office of Technology and Policy Analysis written comments with respect to the petition. If a hearing is scheduled, the comment period will close 45 days after the date the notice was published in the FEDERAL REGISTER.

(g) *Withdrawal of petitions.* A petition may be withdrawn by the petitioner voluntarily by filing a written request with the Office of Technology and Policy Analysis within 15 days of publication in the FEDERAL REGISTER of the notice of filing of the petition. A request for withdrawal of a petition which is received by the Office of Technology and Policy Analysis after that time will be accepted only with the approval of the Office of Technology and Policy Analysis. A petitioner whose petition is withdrawn under this subsection may at any time thereafter submit a new petition in accordance with this section.

(h) *Scope of proceedings.* The Office of Technology and Policy Analysis may consolidate petitions relating to the same or related materials or issues for purposes of publishing notices in the FEDERAL REGISTER and for scheduling public hearings. The Office of Technology and Policy Analysis may expand the scope of any proceeding under this section in order to provide for the consideration of matters which the Office of Technology and Policy Analysis deems to be relevant to the issues raised by the petition or petitions. Conversely, if the Office of Technology and Policy Analysis determines that the scope of a petition is too broad for effective consideration, it may provide for separate consideration of the issues raised by the petition.

(i) *Confidential business information.* Business data which the petitioner or any other party desires to submit in confidence at any point in a proceeding shall be submitted on separate sheets bearing at the top of each sheet the clear legend "Confidential Business Information." By submitting data identified as "Confidential Business Information," the petitioner or other party represents that the information is exempted from public disclosure either by the Freedon of Information Act or by some other specific statutory exemption. Any request for confidential treatment must be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed. However, the Office of Technology and Policy Analysis may refuse to accept as "confidential" any information which it considers is not intended to be protected under the law. Any information which the Office of Technology and Policy Analysis refused to accept as "confidential" will be returned to the submitter and will not be considered. Such material may, however, be resubmitted as nonconfidential information in which case it will be made part of the public record.

(j) *Record.* The record of a proceeding consists of the petition submitted under paragraph (c), any written comments submitted under paragraph (f), any confidential business information submitted under paragraph (i), a copy of the record of any hearings held under § 777.8, and any other documentary materials relating to the petition received by the Office of Technology and Policy Analysis during the proceeding. The record, except for any confidential business information submitted under paragraph (i) of this se tion and any comments from agencies of the United States or foreign governments, will be available for public inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

(k) *Decision.* Within 45 days after the close of a proceeding on a petition the Department will determine whether to impose monitoring or controls, or both. A decision of the Department in a proceeding need not be based exclusively upon the record of the proceeding. The Department's decision together with a detailed statement of the reasons therefor will be published in the FEDERAL REGISTER within 45 days after the close of a proceeding.

(l) *Implementing regulations.* In proceedings where the Department decides that export monitoring or controls, or both, are warranted, proposed regulations implementing that decision will be published in the FEDERAL REGISTER within 15 days following the decision. If the Department has already imposed monitoring or controls on a temporary basis, the proposed regulations will propose revisions to the temporary monitoring or controls. Final regulations will be published within 30 days of the publication of the proposed regulations or revisions. Any public comments received within the comment period will be considered by the Office of Technology and Policy Analysis before the issuance of the final regulations.

[45 FR 1009, Jan. 4, 1980, as amended at 47 FR 15114, Apr. 8, 1982; 47 FR 23439, May 28, 1982; 50 FR 41133, Oct. 9, 1985; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 777.9 Public hearings.

(a) *Scope.* This section sets forth procedures for the conduct of public hearings relating to export monitoring or controls under section 7 of the Export Administration Act of 1979. Any decision made by the Department subsequent to a hearing will not necessarily be limited to the record developed in the proceeding.

(b) *Requests for public hearings relating to petitions submitted under § 777.8.* A public hearing or hearings on the imposition of export monitoring or controls may be requested by a petitioner under § 777.8. Public hearings may also be requested by an entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes, produces or exports the metallic materials which are the subject of a notice published in the FEDERAL REGISTER pursuant to § 777.8, provided such request is received by the Office of Technology and Policy Analysis within 30 days of the publication of such notice. A request for a public hearing must be in writing and must be delivered by hand or by mail as provided in § 777.8(d). If an entity other than the petitioner requests a hearing, the request must also contain:

(1) The name, address and telephone number of the entity requesting the hearing; and

(2) A complete statement of the factual basis for its assertion that it is representative of an industry or a substantial segment of an industry which processes, produces or exports the materials which are the subject of the FEDERAL REGISTER notice. If the entity requesting a public hearing does not qualify under this section, a written notice of denial of its request for a public hearing will be sent to the requesting party.

(c) *Public hearings initiated by the department.* The Office of Technology and Policy Analysis may at its own initiative hold public hearings in any matter arising under section 7 of the Export Administration Act of 1979, if it determines that hearings would be in the public interest.

(d) *Notice of public hearings.* Notice of public hearings will be published in the FEDERAL REGISTER. The notice will described the scope of the hearings, the date, time, and place of the hearings and the name of a person to contact for additional information or to request time to speak at the hearing. Public hearings may be held in more than one location.

(e) *Attendance at public hearings.* Hearings will be open to the public. While it is not anticipated that national security classified information will be presented at public hearings, the FEDERAL REGISTER notice may provide for hearings which will be open only to persons having appropriate security clearance.

(f) *Participation in public hearings.* Any person demonstrating a bona fide interest in the subject matter of a public hearing may request an opportunity to testify at the hearing.

(g) *Hearing panel.* The Department will appoint a Hearing Panel consisting of one or more members for each public hearing and will identify a Presiding Officer. Where appropriate, members of other federal agencies may be included on the Hearing Panel.

(h) *Conduct of hearings.* (1) Hearings conducted under this section will be fact-finding proceedings, and there will be no formal pleadings or adverse parties. Formal rules of evidence will not apply.

(2) Persons testifying at a hearing must submit ten copies of their proposed testimony and of all exhibits to the Hearing Panel before or at the time of testifying. All such material must be of a size consistent with ease of handling, transportation and filing. While large exhibits may be used during a hearing, copies of such exhibits in reduced size must be provided to the Panel. Any person, whether giving testimony or not, may submit a written statement to the Hearing Panel, in ten copies, for inclusion in the record of the proceeding.

(3) Persons who demonstrate a bona fide interest in the subject matter of the hearing and who have filed a timely request will, within reasonable time constraints, be provided an opportunity to testify. Time permitting, other persons who have not been scheduled to testify who are in attendance at the hearing may be provided an opportunity to present a brief oral statement. Persons desiring to present rebuttals to testimony previously given may also be provided an opportunity to make a brief statement, time permitting. Any person testifying may be questioned by the Hearing Panel. No other questioning will be permitted.

(4) Confidential business information may not be presented at a public hearing. Submission of confidential business information will be subject to the same procedures applicable to petitions described in § 777.8(i).

(5) The Presiding Officer will determine all procedural matters.

(6) The FEDERAL REGISTER notice may provide for a stenographic record of the hearing. Transcripts of such public proceedings may be obtained by any person from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. A copy of the transcript will be placed in the official record of the proceeding and will be available for public inspection. In proceedings where no stenographic record is maintained, the record of the hearing will consist of the written statements submitted to the Hearing Panel.

[45 FR 1010, Jan. 4, 1980, as amended at 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§§ 777.10—777.14 [Reserved]

§ 777.15 General provisions: Monitoring.

(a) *Statutory requirements.* Section 7(b) of the Export Administration Act of 1979, as amended, requires the monitoring of exports and contracts for exports, of any article, material or supply (except those commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious impact on the economy or any sector thereof. The Act further requires that such monitoring shall commence at a time adequate to insure that data sufficient to permit achievement of the policies of the Act will be available in a timely fashion. These statutory requirements are implemented primarily by the provisions contained in this part.

(b) *Commodities subject to monitoring.* Commodities currently subject to export monitoring are listed in supplements to this part.

(c) *Reporting requirements.* Reports are submitted on form DIB-661P, monitoring report. Data to be submitted, reporting periods, and details of the reporting vary according to the commodities being monitored. Form DIB-661P is a general purpose form which is modified as may be necessary for specific monitoring programs. Part 1 of the form may be used alone or in conjunction with Part 2. Refer to the sections on specific commodities subject to monitoring below for details on reporting requirements and specific instructions on preparing and submitting reports.

(d) *Publication of monitoring reports.* To the extent practicable, the results of this monitoring are aggregated and included in weekly reports compiled by the Office of Export Licensing, setting forth with respect to each article, material, or supply monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply and demand. If there is sufficient information to justify weekly reports, the Office of Export Licensing may compile reports on a monthly basis. In either instance the reports are published in the FEDERAL REGISTER.

(e) *Confidentiality.* The information obtained in the monitoring programs is subject to the confidentiality provisions of section 12(c) of the Export Administration Act of 1979, as amended.

(f) *Control decisions.* The information obtained through monitoring and contained in the reports is also used by the Department of Commerce in determining whether the export of the commodities subject to monitoring should be controlled.

(g) *Other applicable provisions.* To the extent consistent with the monitoring provisions of this part, the other portions of the Export Administration's regulations are applicable to such provisions, including the enforcement, recordkeeping and penalty provisions contained in Parts 787 and 788 of this chapter.

[43 FR 47173, Oct. 13, 1978, as amended at 44 FR 30322, May 25, 1979; 45 FR 59301, Sept. 9, 1980; 45 FR 63837, Sept. 26, 1980; 52 FR 28136, July 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

SUPPLEMENT NO. 1—[RESERVED]

SUPPLEMENT NO. 2—PETROLEUM AND PETROLEUM PRODUCTS SUBJECT TO SHORT SUPPLY LICENSING CONTROLS

[See footnotes at end of table]

Schedule B No.[1]	Commodity description[2]	Unit of quantity[3]
	Petroleum Licensed Only in Accordance With § 777.6(d)(1)	
	Group A	
475.0710	Crude petroleum, including reconstituted crude petroleum, tar sands and crude shale oil	Barrel.
	Petroleum Products Subject to Validated Licensing in Accordance With § 777.6(d)(2) and (3)	
	Group B	
475.2520	Aviation gasoline	Barrel
	Group C	
475.2520	Gasoline, except aviation type	Do.
475.6781	Gasoline blending agents, hydrocarbon compounds only, n.s.p.f.	Do.
	Group D	
475.3000	Kerosene derived from petroleum, shale oil, or both (except motor fuel)	Do.
	Group E	
475.2530	Jet fuel, naphtha-type	Do.
475.2550	Jet fuel, kerosene-type	Do.

SUPPLEMENT NO. 2—PETROLEUM AND PETROLEUM PRODUCTS SUBJECT TO SHORT SUPPLY LICENSING CONTROLS—Continued

[See footnotes at end of table]

Schedule B No.[1]	Commodity description [2]	Unit of quantity
	Group F	
475.0720	Distillate fuel oils (light)	Do.
475.0740	Distillate fuel oils (No. 4 type)	Do.
475.2560	Other motor fuel (including tractor and stationary turbine fuel)	Do.
	Group G	
475.0760	Residual fuel oils (heavy fuel oils)	Do.
	Group K	
475.1545	Butane	Do.
	Group L	
475.1525	Propane	Do.
	Group M	
475.6720	Natural gas liquids, including LPG, n.s.p.f.	Do.
	Group N	
475.3500	Naphthas, derived from petroleum, shale oil, or both but excluding specialty naphthas which are packaged and exported in containers not exceeding 55 U.S. gallons per container.	Do.
	Petroleum Products Subject to Provisions of Either § 771.16 or § 777.6(d)(3)	
	Group Q	
415.2400	Helium	1,100 ft^3
415.2900	Hydrogen	X.
417.2000	Ammonia, aqueous	Cnt. tn.
423.1010	Carbon dioxide and carbon monoxide	X.
475.2520 475.2560	High purity hydrocarbons, and blends of hydrocarbons used for engine calibration, fuel certification and other laboratory applications in quantities of 10,000 gallons or less.[4]	Pound.
475.1505	Synthetic natural gas[5]	M Cu. Ft.
475.1515	Ethane with a minimum purity of 95 liquid volume percent	Barrel.
475.1570	Gas, manufactured	M Cu. Ft.
475.3500	Specialty naphthas, mineral spirits, solvents and other finished light petroleum products, n.s.p.f., which are packaged and shipped in drums or containers not exceeding 55 U.S. gallons per container.	Do.
475.4000	Mineral oil of medicinal grade derived from petroleum, shale oil or both	Do.
475.4100	Hydraulic fluids, including automatic transmission fluids	Do.
475.4510	Aviation engine lubricating oil, except jet engine lubricating oil	Do.
475.4515	Jet engine lubricating oil	Do.
475.4520	Automotive, diesel and marine engine lubricating oil	Do.
475.4525	Turbine lubricating oil, including marine	Do.
475.4530	Automotive gear oils	Do.
475.4550	Steam cylinder oils	Do.
475.4555	Insulating or transformer oils	Do.
475.4560	Quenching or cutting oils	Do.
475.4565	Other petroleum lubricating oils, including red and pale oils, bright stock, black oils, white mineral oils, and lubricants, n.s.p.f.	Do.
475.4580	Lubricating oils, n.s.p.f., except white mineral oil	Do.
475.5700	Greases	Pound.
475.6710	Carbon black feedstock oil	Barrel.
475.6740	Petroleum jelly and petrolatum, all grades	Pound.
475.6750	White mineral oil, except medicinal grade	Barrel.
475.6781	Other non-lubricating and non-fuel petroleum oils, n.s.p.f	X.
480.6540	Ammonia, anhydrous	S. Ton.
492.5210	Paraffin wax, crystalline, fully refined	Pound.
492.5220	Paraffin wax, crystalline, except fully refined	Do.
492.5240	Paraffin wax, all others (including microcrystalline wax)	Do.
511.2500	Petroleum asphalt	S. Ton.
517.5120	Petroleum coke, calcined	Do.
521.1120	Paving mixtures, bituminous, based on asphalt and petroleum	$ Value.
521.3150	Petroleum coke, except calcined	Do.

Footnotes.

[1] Schedule B Nos. are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 75

[2] Commodity description determines the product under control.

[3] Report commodities in units of quantity indicated.

[4] Such as for reference standards, certified iso-octane, certified normal heptane, or certified fuels used for emission control standards tests, and for comparative laboratory testing.

[5] Natural gas and liquefied natural gas (L.N.G.), and synthetic natural gas commingled with natural gas, require export authorization from the U.S. Department of Energy. See § 770.10(g).

SHIPPING TOLERANCE: 10 percent (See § 786.7 for an explanation of the shipping tolerance.)

[46 FR 24532, May 1, 1981, as amended at 46 FR 38348, July 27, 1981; 46 FR 49113, Oct. 6, 1981; 46 FR 50937, Oct. 16, 1981; 50 FR 730, Jan. 7, 1985; 50 FR 19522 and 19523, May 9, 1985; 50 FR 41133, Oct. 9, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 3—PETROLEUM AND PETROLEUM PRODUCTS INCLUDED IN THE DEFINITION OF "PETROLEUM" UNDER THE NAVAL PETROLEUM RESERVES PRODUCTION ACT OF 1976 [1]

[See footnotes at end of table]

New schedule B No.	Commodity description [2]
415.2400	Helium.
415.2900	Hydrogen.
417.2000	Ammonia, aqueous.
423.1010	Carbon dioxide and carbon monoxide.
475.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
475.0710	Petroleum, partly refined for further refining.
475.0720	Distillate fuel oils, having a Saybolt Universal viscosity at 100° F. of less than 45 seconds.
475.0740	Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100° F. of 45 seconds or more but not more than 125 seconds.
475.0760	Fuel oils, having a Saybolt Universal viscosity at 100° F. of more than 125 seconds.
475.1505	Natural gas, methane and mixtures thereof (including liquified natural gas and synthetic or substitute natural gas). [3]
475.1515	Ethane with a minimum purity of 95 liquid volume percent. [3]
475.1525	Propane with a minimum purity of 90 liquid volume percent.
475.1545	Butane with a minimum purity of 90 liquid volume percent.
475.1570	Other natural gases (including mixtures), n.s.p.f. and manufactured gas. [3]
475.2520	Gasoline, motor fuel (including aviation).
475.2530	Jet fuel, naphtha-type.
475.2550	Jet fuel, kerosene-type.
475.2560	Other motor fuel (including tractor fuel and stationary turbine fuel).
475.3000	Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
475.3500	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
475.4000	Mineral oil of medicinal grade derived from petroleum, shale oil or both.
475.4100	Hydraulic fluids, including automatic transmission fluids
475.4510	Aviation engine lubricating oil, except jet engine lubricating oil.
475.4515	Jet engine lubricating oil.
475.4520	Automotive, diesel, and marine engine lubricating oil.
475.4525	Turbine lubricating oil, including marine.
475.4530	Automotive gear oils.
475.4550	Steam cylinder oils.
475.4555	Insulating or transformer oils.
475.4560	Quenching or cutting oils.
475.4580	Lubricating oils, n.s.p.f., except white mineral oil.
475.5700	Greases.
475.6710	Carbon black feedstock oil.
475.6720	Natural gas liquids, including LPG, n.s.p.f.
475.6740	Petroleum jelly and petrolatum, all grades.
475.6750	White mineral oil, except medicinal grade.
475.6781	Other non-lubricating and non-fuel petroleum oils, n.s.p.f.
480.6540	Ammonia, anhydrous.
492.5210	Paraffin wax, crystalline, fully refined.
492.5220	Paraffin wax, crystalline, except fully refined.
492.5240	Paraffin wax, all others (including microcrystalline wax).
511.2500	Paving mixtures, bituminous, based on asphalt and petroleum.
517.5120	Petroleum coke, calcined.
521.1120	Petroleum asphalt.
521.3150	Petroleum coke, except calcined.

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[1] Those petroleum and petroleum products whose export is prohibited if produced on a Naval Petroleum Reserve or if they are the product of a resource produced thereon. See Part 777.

[2] This commodity description for the most part is the same description found in the Bureau of Census Schedule B Nos. dated January 1, 1978. In some instances the description presented here is expanded or modified to ensure proper identification of products subject to export restriction. Commodity description rather than Schedule B No. determines the commodity included in the definition of "Petroleum" under the Naval Petroleum Reserves Production Act.

[3] Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas, (Schedule B Nos. 475.1505, 475.1515, and 475.1570) require export authorization from the U.S. Department of Energy. See § 770.10(j).

Applications to export the above will be considered only in accordance with Part 777.

[46 FR 24532, May 1, 1981, as amended at 46 FR 38349, July 27, 1981; 50 FR 19523, May 1, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 4—UNPROCESSED WESTERN RED CEDAR COMMODITIES SUBJECT TO VALIDATED LICENSING [1]

Schedule B No.	Commodity description	Unit
200.3516	Western red cedar (Thuja Plicata) logs and timber.	MBF
202.2820	Western red cedar lumber; rough, containing wane.	Do
202.2840	Western red cedar lumber; dressed or worked, containing wane.	Do

[1] Commodity description, not Schedule B Number, is determinative of the commodity subject to validated licensing.

[45 FR 21622, Apr. 2, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 778—SPECIAL NUCLEAR CONTROLS

Sec.
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SUPPLEMENT NO. 1—PROCEDURES ESTABLISHED PURSUANT TO THE NUCLEAR NON-PROLIFERATION ACT OF 1978
SUPPLEMENT NO. 2—COUNTRIES THAT ARE PARTY TO THE NUCLEAR NON-PROLIFERATION TREATY AND/OR THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (TREATY OF TLATELOLCO)
SUPPLEMENT NO. 3—[RESERVED]
SUPPLEMENT NO. 4—NUCLEAR NON-PROLIFERATION—SPECIAL COUNTRY LIST

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

SOURCE: 45 FR 43142, June 25, 1980, unless otherwise noted. Redesignated at 53 FR 37751, Sept. 28, 1988.

§ 778.1 Purpose.

(a) *Scope.* This part defines the types of export transactions that are governed by the U.S. policy concerning the non-proliferation of nuclear weapons or explosive devices, or the U.S. maritime nuclear propulsion policy. The controls implement the policies set out in sections 3(2) (A) and (B) of the Export Administration Act of 1979 (Pub. L. 96-72) and section 309(c) of the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95-242), that is:

(1) To exercise the necessary vigilance from the standpoint of their significance to the national security of the United States;

(2) To further significantly the foreign policy of the United States or to fulfill its international responsibilities; and

(3) To maintain controls over items because of their potential significance for nuclear explosive purpose.

(b) *Related legislation.* These controls supplement those exercised by the Nuclear Regulatory Commission and the Department of Energy under the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and other statutes and by the Office of Munitions Control, Department of State, under the Arms Export Control Act of 1976. (See § 770.10.)

§ 778.2 Nuclear-related commodities and technical data (The Nuclear Referral List).

(a) *Commodities controlled for nuclear reasons.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 required the President to publish procedures regarding the control by the Department of Commerce over export items under its jurisdiction that could be, if used for purposes other than for which the export is intended, of significance for nuclear explosive purposes. The commodities listed on the Commodity Control List (Supplement No. 1 to § 799.1) with "nuclear nonproliferation" included in the "Reason for Control" paragraph of the applicable entry have been identified as those that could be of significance for nuclear explosive purposes, and hence are subject to validated licensing and the procedures established under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These commodities are referred to as "The Nuclear Referral List." The procedures established pursuant to section 309(c), which appeared at 49 FR 20780 (May 16, 1984), are reprinted as Supplement No. 1 to this Part 778. In addition, any item not on the Nuclear Referral List that requires a validated export license for national security reasons and is intended for a nuclear related end-use or end-user is subject to these procedures. Also, described in § 779.4(c), are certain related technical data that are subject to nuclear nonproliferation controls. The Commodity Control List indicates the countries to which validated licenses are required. Some commodities are controlled for nuclear reasons to all Country Groups, and in certain instances to Canada. For other commodities, the nuclear controls apply to a country only when it is excluded from the list of countries contained in Supplements 2 and 3 of Part 773 of this chapter.

(b) *Processing of applications.* Applications for the export of commodities and technical data described in paragraph (a) of this section will be processed in accordance with the interagency review procedures established pursuant to section 309(c) of the Nuclear Non-Proliferation Act reprinted as Supplement No. 1 to this part, and the applicable provisions of these regulations.

[45 FR 85446, Dec. 29, 1980, as amended at 46 FR 38349, July 27, 1981; 47 FR 58123, Dec. 29, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 12594, Mar. 28, 1989]

§ 778.3 Additional validated license requirements for exports with certain nuclear end-uses.

In addition to the validated license requirements for commodities and technical data referred to in § 778.2 above, a validated license is required for export to all destinations, including Canada, of any technical data not exportable under the provisions of General License GTDA (except "operation technical data" and "sales technical data" for export to and use in the countries listed in Supplement No. 2 to Part 773 or Canada) where the exporter knows or has reason to know that the data will be used directly or indirectly in the activities listed below. A validated license is required for export to all destinations, except Canada and those countries listed in Supplement No. 2 to Part 773, of any commodity where the exporter knows or has reason to know that the commodity will be used directly or indirectly in the activities listed below, whether or not the item is specifically designed or modified for such activities.

(a) Designing, developing, fabricating or testing nuclear weapons or nuclear explosive devices;[1, 2] or

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[1] Commodities and technical data specifically designed or specifically modified for use in designing, developing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Munitions Control, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, commodities and technical data specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

(b) Designing, constructing, fabricating, or operating the following facilities, or components for such facilities[1]:

(1) Facilities for the chemical processing of irradiated special nuclear or source material;

(2) Facilities for the production of heavy water;

(3) Facilities for the separation of isotopes of source and special nuclear material; or

(4) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

[45 FR 43142, June 25, 1980; 45 FR 53090, Aug. 11, 1980, as amended at 53 FR 12669, Apr. 15, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 12594, Mar. 28, 1989]

§ 778.4 Export licensing factors.

To fulfill the considerations set forth in § 778.1, the following factors are among those used to determine what action should be taken on individual applications subject to §§ 778.2 and 778.3:

(a) The stated end-use of the commodity or technical data;

(b) The significance for nuclear purposes of the particular commodity or technical data;

(c) The availability of the commodity or technical data from non-U.S. sources;

(d) The types of assurances or guarantees against use for nuclear explosive purposes or proliferation given in the particular case; and

(e) The non-proliferation credentials of the importing country concerned, based on consideration of factors such as:

(1) A country's status as a party to the Treaty on the Non-Proliferation of Nuclear Weapons or the Treaty for the Prohibition of Nuclear Weapons in Latin America (see Supplement No. 2);

(2) Whether the country has all its nuclear activities under International Atomic Energy Agency safeguards or equivalent full scope safeguards;

(3) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. a the country concerned;

(4) The country's public statemen and policies concerning nuclear dev opments and non-proliferation;

(5) The extent of cooperation i non-proliferation policy generally (i dications such as willingness to cons on international non-proliferatio issues); and

(6) Intelligence data on a country nuclear intentions and activities.

In view of the numerous conside ations to be weighted in the case-b case review process and changing ci cumstances, it is not feasible to speci countries' status for the purpose o implementing these controls.

§ 778.5 Maritime nuclear propulsion.

(a) *Policy.* It is the policy of th United States Government not to pa ticipate in and not to authorize Unite States firms or individuals to partic pate in foreign *naval* nuclear propu sion plant projects, except under a Agreement for Cooperation on nav nuclear propulsion executed in accor ance with section 123(d) of the Atom Energy Act of 1954. However, it is th policy of the United States Govern ment to encourage United States fir and individuals to participate in mar *time* (*civil*) nuclear propulsion pla projects in friendly foreign countri provided that United States naval n clear propulsion information is not di closed.

(b) *Exports of technology.* In view o the close relationship between mar time and naval nuclear propulsi technologies, it is necessary that th United States Government assu itself that United States naval tec nology will not be disclosed in conne tion with a foreign maritime nucle propulsion project. Therefore, a va dated export license or reexp a thorization must be obtained fr th Office of Export Licensing before an disclosure of technical data in conne tion with a foreign maritime nucle propulsion project. This technolo includes any technical data relating t maritime nuclear propulsion pla their land prototypes, and special fa cilities for their construction, suppo or maintenance, including any m chinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities. Section 779.5(e) contains special provisions and instructions on filing applications for the export of such technology. This requirement applies to transactions, including assignment or exchange of personnel between U.S. firms and foreign firms, regardless of the legal relationship between the firms.

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[1] Also see § 779.5(e) for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

§ 778.6 [Reserved]

§ 778.7 Preparing application.

An application for a license to export commodities or technical data subject to the provisions of § 778.2, § 778.3 or § 778.5 shall be prepared and submitted on Form ITA-622P, Application for Export License, in accordance with instructions set forth in §§ 772.5 and 779.5(e) with the following additional instructions:

(a) *Identification of license application.* Enter the words "NUCLEAR CONTROLS" in Item 4, "Special Purpose," of Form ITA-622P.

(b) *Consignee in country of ultimate destination.* If the consignee in the country of ultimate destination is not the end-user of the commodities, give the name and address of the end-user in Item 9(b), "Description of Commodity or Technical Data," or on an attachment to the application, and if known, the specific geographic locations of any installations, establishments, or sites at which the commodities will be used.

(c) *Supplier.* If the applicant is not also the manufacturer of the commodities and the application is being submitted under § 778.3, indicate on the application, in Item 9(b), "Description of Commodity or Technical Data" or on an attachment, whether the advice of the manufacturer required in § 778.6 above has been received regarding the necessity for a validated license.

(d) *Commodity description.* If the CCL entry in question is divided into sub-entries, indicate the specific subentry which describes the commodity. In addition, specifications or descriptive brochures should be provided when available. If applicable, include a description of any specific features of design or specific modifications which make the commodity capable of the uses described in § 778.3 of this part.

(e) *End-use.* A vague or general end-use description will delay review of an application. Applications indicating resale as the end-use sometimes must be returned for more information. When submitting an application under § 778.3, fully explain the basis for the knowledge or belief that the commodities are intended for the purpose(s) described therein. Additionally, indicate, if possible, the specific end-use(s) the commodities will have in designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in designing, constructing, fabricating, or operating the facilities described in § 778.3.

[45 FR 21622, Apr. 2, 1980, as amended at 47 FR 5211, Feb. 4, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 778.8 Effect of other provisions.

If, at the time of export, a validated license is also required under other provisions of the Export Administration regulations, the application shall be submitted in accordance with the provisions of Part 778 as well as other applicable provisions. The requirements of this part are applicable in addition to, rather than in lieu of, any other validated license requirement set forth in the Export Administration regulations. Insofar as consistent with the provisions of this part, all of the other provisions of the Export Administration Regulations shall apply equally to applications for licenses and licenses issued under these special provisions.

SUPPLEMENT NO. 1—PROCEDURES ESTABLISHED PURSUANT TO THE NUCLEAR NON-PROLIFERATION ACT OF 1978[1]

PART F. EXPORT ITEMS UNDER SECTION 309c OF THE ACT

Section 1. Procedures.

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[1] Procedures were published at 43 FR 25330 (June 9, 1978).

a. A list of commodities licensed by the Department of Commerce which, if used for purposes other than those for which the export is intended, could be of significance for nuclear explosive purposes, shall be developed and maintained by the Departments of Commerce and Energy in consultation with the Departments of State and Defense, the Arms Control and Disarmament Agency and the Nuclear Regulatory Commission.

b. Export license applications for commodities on the list referred to in paragraph 1, as well as any other applications which may involve possible nuclear uses, shall be reviewed by the Department of Commerce in consultation with the Department of Energy. When either the Department of Commerce or the Department of Energy believes that—because of the proposed destination of the export, its timing, or other relevant considerations—a particular application should be reviewed by other agencies, or denied, such application shall be referred to the Subgroup on Nuclear Export Coordination. The Subgroup shall promptly consider any such application and provide its advice and recommendations to the Department of Commerce. Disagreements shall be handled in accordance with the provisions of section 5 of Part A. [Section 5 indicates that, if interagency differences cannot be resolved, the issue may be referred to the NSC Ad Hoc Group on Non-Proliferation or, thereafter, the President. Notwithstanding interagency differences, the Department of Commerce has the authority to issue or deny licenses, provided it gives all other concerned agencies five working days notice.]

c. Reviewing agencies shall promptly, but not later than 30 days after receipt from the Department of Commerce of an application, provide their views thereon to the Department of Commerce. If, however, it is not possible to provide views within this time or if, at any point during review, it appears that final action on an application will not be conpleted within 60 days of receipt by the Department of Commerce, any agency which requires additional time shall inform the Department of Commerce at the earliest possible time of the issues involved and provide an estimate of the time needed to complete its review. In accordance with section 17(d)(2) of the Export Administration Act of 1979, if action is not completed within 180 days of receipt of the application by the Department of Commerce, the applicant shall have the rights of appeal and court action provided in section 10(j) of such Act.

(d) If the Subgroup recommends denial of an application, the reasons therefor shall be articulated for the record. If the Department of Commerce agrees with the recommendation, that Department, in accordance with section 10(f)(2) of the Export Administration Act of 1979, shall to the maximum extent consistent with national security and foreign policy of the United States, inform the applicant in writing of the negative considerations raised with respect to such license application. Before final action is taken on the application, the applicant shall be afforded the opportunity to respond within 15 days to such negative considerations. If appropriate, the applicant's response will be made available to the Subgroup for further review and advice. In the event oif any disagreement which cannot be resolved between the agencies, the provisions in section 5 of part A shall be followed.

[45 FR 43142, June 25, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 12594, Mar. 28, 1989]

Supplement No. 2—Countries That Are Party to the Nuclear Non-proliferation Treaty and/or the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)[1]

Afghanistan
Australia
Austria
Bahamas[1]
Bangladesh
Barbados[1]
Belgium
Benin
Bolivia
Botswana
Bulgaria
Burundi
Cambodia
Cameroon
Canada
Cape Verde
Central Africa Republic
Chad
China (Taiwan)
Colombia[1]
Congo
Costa Rica
Cyprus
Czechoslovakia
Denmark
Dominician Republic[1]
Ecuador[1]
El Salvador
Ethiopia
Fiji
Finland
Gabon
Gambia, The
Germany (Federal Republic of Germany)
Ghana
Greece
Grenada[1]
Guatemala[1]
Guinea-Bissau
Haiti[1]
Honduras
Hungary
Iceland
Indonesia
Iran
Iraq
Ireland
Italy
Ivory Coast
Jamica[1]
Japan
Jordan
Kenya
Korea, Republic of
Laos
Lebanon
Libya
Lesotho
Liberia
Liechtenstein
Luxembourg
Madagascar-Malagasy Republic
Malaysia
Maldives
Mali
Malta
Mauritius
Mexico[1]
Mongolian People's Republic
Morocco

Nepal
Netherlands
New Zealand
Nicaragua[1]
Nigeria
Norway
Panama[1]
Paraguay[1]
Peru[1]
Philippines
Poland
Portugal
Romania
Rwanda
Saint Lucia
San Marino
Senegal
Sierra Leone
Singapore
Somalia
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Thailand
Togo
Tonga
Trinidad and Tobago[1]
Tunisia
Turkey
Tuvalu
Union of Soviet Socialist Republics
United Kingdom
United States
Upper Volta
Uruguay[1]
Vatican City
Vietnam, Republic of
Venezuela
Western Samoa
Yugoslavia
Yemen, People's Democratic Republic of
Zaire

[1] As of May 1, 1980. Those countries marked with an asterisk are also party of the Treaty of Tlatelolco and have waived the treaty's entry into force provisions. Colombia and Trinidad and Tobago are Non-Proliferation Treaty signatories.

[45 FR 43142, June 25, 1980, as amended at 45 FR 53090, Aug. 11, 1980; 46 FR 21155, Apr. 9, 1981; 50 FR 29205, July 18, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 40826, Oct. 5, 1990]

SUPPLEMENT No. 3—[RESERVED]

SUPPLEMENT No. 4—NUCLEAR NON-PROLIFERATION—SPECIAL COUNTRY LIST

Afghanistan
Albania
Algeria
Andorra
Angola
Argentina
Bahrain
Brazil
Burma
Chile
Comoros
Djibouti
Guyana
India
Iran
Iraq
Israel
Kuwait
Libya
Malawi
Mauritania
Mozambique
Niger
Oman
Pakistan
Qutar
Saudi Arabia
South Africa
St. Kitts
Syria
Tanzania
United Arab Emirates
Vanuatu
Yemen Arab Republic
Zamiba
Zimbabwe

[55 FR 26657, June 29, 1990]

PART 779—TECHNICAL DATA

Sec.

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SUPPLEMENT No. 5—QUESTIONS AND ANSWERS—GENERAL LICENSE GTDA

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

SOURCE: 13th Gen. Rev. of Export Regs., 35 FR 9178, June 12, 1970, unless otherwise noted. Redesignated at 53 FR 37751, Sept. 28, 1988.

§ 779.1 Definitions.[1]

(a) *Technical data.*[2] "Technical data" means information of any kind

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[1] See § 770.2 of this subchapter for definitions of other terms used in this regulation.

[2] The provisions of this Part 779 do not apply to "classified" technical data, i.e. technical data which have been officially as-

Continued

that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials. The data may take a tangible form, such as a model,[3] prototype[3], blueprint, or an operating manual (the tangible form may be stored on recording media); or they may take an intangible form such as technical service. All software is technical data.

(b) *Export of technical data* [4,5]—(1) *Export of technical data.* "Export of technical data" means (i) an actual shipment or transmission of technical data out of the United States;[6] (ii) any release of technical data in the United States with the knowledge or intent that the data will be shipped or transmitted from the United States to a foreign country; or (iii) any release of technical data of U.S.-origin in a foreign country.

(2) *Release of technical data.* Technical data may be released for export through:

(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;

(ii) Oral exchanges of information in the United States or abroad; and

(iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

(c) *Reexport of technical data.* "Reexport of technical data" means an actual shipment or transmission from one foreign country to another, or any release of technical data of U.S. origin in a foreign country with the knowledge or intent that the data will be shipped or transmitted to another foreign country. Technical data may be released for reexport through:

(1) Visual inspection of U.S.-origin equipment and facilities abroad;

(2) Oral exchanges of information abroad; and

(3) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

[35 FR 9178, June 12, 1970, as amended at 50 FR 16469, Apr. 26, 1985; 50 FR [illegible] Sept. 11, 1985. Redesignated at 53 FR [illegible] Sept. 28, 1988]

§ 779.2 Licenses to export.

Except as provided in § 770.3(a) of this subchapter, an export of technical data must be made under either a U.S. Department of Commerce general license or a validated export license. (See §§ 771.1 and 772.2 of this subchapter for definitions of "general" and "validated" licenses.) General Licenses GTDA and GTDR (see §§ [illegible] and 779.4) apply to specific types of exports of technical data. A validated license is required for any export of technical data where these general licenses do not apply, except in the case of certain exports to Canada.[7,8]

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signed a security classification (e.g. "top secret," "secret," or "confidential") by an officer or agency of the U.S. Government. The export of classified technical data is controlled by the Office of Munitions Control of the U.S. Department of State or the U.S. Atomic Energy Commission, Washington, DC.

[3] Models and prototypes are controlled both as technical data and as commodities. The more restrictive Export Administration requirements apply to their export. See Part 799 for the commodity controls.

[4] License applications for, or questions about, the export of technical data relating to commodities which are licensed by U.S. Government agencies other than the U.S. Department of Commerce shall be referred to such other appropriate U.S. Government agency for consideration (see § 770.10 of this subchapter).

[5] Patent attorneys and others are advised to consult the U.S. Patent Office, U.S. Department of Commerce, Washington, DC 20231, regarding the U.S. Patent Office regulations concerning the filing of patent applications or amendments in foreign countries. In addition to the regulations issued by the U.S. Patent Office, technical data contained in or related to inventions made in foreign countries or in the United States, are also subject to the U.S. Department of Commerce regulations covering the export of technical data, in the same manner as the export of other types of technical data.

[6] As used in this Part 779, the United States includes its possessions and territories.

[7] Only the restriction set forth in § 779.4(c) apply to exports of technical data for use in Canada. In all other cases, an export of technical data for use in Canada may be made without either a validated or a general license.

Continued

§ 779.3 General License GTDA: Technical data available to all destinations.

NOTE: In this § 779.3 the word "information" means "technical data" as defined in § 779.1 including software.

(a) *Establishment of general license.* A General License GTDA is hereby established authorizing:

(1) Unrestricted export to any destination of information that is already publicly available or will be made publicly available as described in paragraph (b) of this section;

(2) Unrestricted export to any destination of information arising during or resulting from fundamental research, as described in paragraph (c) of this section;

NOTE: Paragraphs (a)(1) and (a)(2) of this section do not authorize the export of data contained in a patent application for purposes of filing and/or publishing for opposition abroad. Such exports are controlled by the U.S. Patent and Trademark Office and must be licensed by that office. *See* EAR § 770.10(j).

(3) Release of educational information, as described in paragraph (d) of this section; and

(4) Export of information in connection with certain patent applications, as described in paragraph (e) of this section.

NOTE 1: See paragraph (f) regarding Government sponsored research covered by contractual national security controls and the note following this section regarding consulting and training. Use of General License GTDA is subject to the prohibitions of § 771.2(c) (1), (4), and (9), but not to the other prohibitions of § 771.2(c).

NOTE 2: Supplement No. 5 to part 779 contains explanatory questions and answers about the use of General License GTDA. Certain paragraphs of this § 779.3 are followed by references to relevant questions and answers in supplement No. 5.

(b) *Publicly available.* Information is made public and so becomes "publicly available" when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons, such as those in a scientific or engineering discipline, interested in the subject matter either free or at a price that does not exceed the cost of reproduction and distribution (see Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (see Question A(6));

(3) Patents available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or other gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding:

(A) A registration fee reasonably related to costs and reflecting an intention that all interested and technically qualified persons be able to attend, or

(B) A limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility (see Questions B(1) through B(6)).

This General License GTDA authorizes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will

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[1] Although the Export Administration may provide general information or licensing policies regarding the prospects of approval of various types of export control actions, including actions with respect to technical data, normally it will give a formal judgment respecting a specific request for an action only upon the actual submission of a formal application or request setting forth all of the facts relevant to the export transaction and supported by all required documentation.

Advice is always available, however, regarding any questions as to the applicability of a general license. Such questions should be submitted by letter to the U.S. Department of Commerce, Office of Export Licensing (Attention: 866), Washington, DC 20230.

be made publicly available if favorably received. (See Questions A(1) and A(3).)

(c) *Information resulting from fundamental research*—(1) *Fundamental research.* Paragraphs (c)(2) through (c)(4) and paragraph (f) of this section provide specific operational rules that will be used to determine whether research in particular institutional contexts qualifies as "fundamental research." The intent behind those operational rules is to identify as "fundamental research" basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in §779.3(f). (See Question D(8).)

(2) *University-based research.* (i) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described below. ("University" means any accredited institution of higher education located in the United States.)

(ii) Prepublication review by a sponsor of university research solely to ensure that publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the rule described in paragraph (c)(2)(i) of this section. However, General License GTDA does not authorize the release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review. See other sections in this part 779 for provisions that may authorize such releases without a validated license. (See Questions D(7), D(9), and D(10).)

(iii) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the rule described in paragraph (c)(2)(i) of this section, so long as the review causes no more than a temporary delay in publication of the research results.

(iv) However, General License GTDA does not authorize the initial transfer of information from an industry sponsor to university researchers where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Question D(2).)

(v) University based research is not considered "fundamental research" if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless become subject to General License GTDA once all such restrictions have expired or have been removed. (See Questions D(7) and D(9).)

(vi) The provisions of paragraph (f) of this section will apply if a university or its researchers accept specific national security controls (as defined in paragraph (f) of this section) on a research project or activity sponsored by the U.S. Government. (See Questions E(1) and E(2).)

(3) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as "fundamental research" within any appropriate system controlling release of information by such scientists and engineers devised by the agency or the FFRDC. (See Questions D(8) and D(11).)

(4) *Corporate research.* (i) Research conducted by scientists or engineers working for a business entity will be considered "fundamental research" at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls as defined in paragraph (f) of this section.

(ii) Prepublication review by the company solely to ensure that the publication would compromise no pr prietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (c)(4)(i) of this section. However General License GTDA does not authorize the release of information to university researchers where the research results are subject to prepublication review. See other sections in this part 779 for provisions that may authorize such releases without a validated license. (See Questions D(8), D(9), and D(10).)

(iii) Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

(iv) However, General License GTDA does not authorize the initial transfer of information from a business entity to researchers where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.

(5) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (c)(2) through (c)(4) of this section will be treated as corporate research, as described in paragraph (c)(4) of this section. (See Question D(8)).

(d) *Educational information.* The release of "educational information" referred to in paragraph (a)(3) of this section is release by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is treated in paragraph (c)(2) of this section. (See Question C(1) through C(6).)

(e) *Patent applications.* The information referred to in paragraph (a)(4) of this section is:

(1) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark office;

(2) Information contained in a patent application, or an amendment, modification, supplement, or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5 (see § 770.10(j)); or

(3) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

(f) *Government-sponsored research covered by contract controls.* (1) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, paragraph (a)(2) of this section will not apply to any export of such information in violation of such controls. General License GTDA as described in paragraph (a)(2) of this section is nonetheless available for any export of information resulting from the research that is consistent with the specific controls.

(2) Examples of "specific national security controls" include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a "specific national security control". (See Questions E(1) and E(2).)

(g) *Advice concerning uncontrolled information.* Persons may be concerned that an export of uncontrolled information could adversely affect U.S. national security interests. Exporters who wish advice before exporting such information can contact the appropriate Government scientific or technical personnel by calling the

Bureau of Export Administration at (202) 377-4811.

NOTE: Consulting and training. Technical data can be inadvertently exported in various ways. Consulting and training are especially effective mechanisms of technology transfer. The exporter should be aware that the Department of Commerce maintains controls on exports of technical data that do not qualify for General License GTDA as described in paragraphs (a)(1) through (a)(3) of this section, including application abroad of personal knowledge or technical experience acquired in the United States. (See also paragraph (g) of this section and Question F(1).)

(Approved by the Office of Management and Budget under control number 065-0011)

[54 FR 40646, Oct. 3, 1989]

§ 779.4 General license GTDR: Technical data under restriction.

A general license designated *GTDR* is hereby established authorizing the export of technical data that are not exportable under the provisions of General License *GTDA*, subject to the provisions, restrictions, exclusions, and exceptions set forth below and subject to the written assurance requirement set forth in paragraph (f) of this section.

(a) *Country Groups S and Z restrictions.* No Technical data may be exported under this general license to Country Group S or Z.

(b) *Restrictions applicable to Country Groups Q, W, Y, T and V, Afghanistan and the People's Republic of China.* (1) The following are definitions of terms used to describe certain types of technical data restricted for export to Country Groups Q, W, Y, T and V, Afghanistan and the People's Republic of China;

(i) "Operation technical data" is defined as explicit data in such forms as manuals, instruction sheets, blueprints or software, provided they are:

(A) Sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or specifically authorized for reexport, to the same consignee and destination to which the commodity was or will be exported under this license of authorization;

(B) A single shipment sent no later than one year following the shipment of the commodity to which the technical data are related;

(C) Of a type delivered with the commodity in accordance with established business practice;

(D) Necessary to the assembly, installation, maintenance, repair, or operation of the commodity[9]; and

(E) Not related to the production, manufacture, or construction of the commodity.

(ii) "Sales technical data" is defined as data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any commodity, plant or technical data, provided that:

(A) The commodity, plant or technical data are not (and are not related to) a commodity:

(*1*) Identified by the code letter "A" following the Export Control Commodity Number (ECCN) on the Commodity Control List (Supplement No. 1 to § 799.1), or

(*2*) Shown in Supplement Nos. 2 or 3 Part 770 (controlled by U.S. Department of State and Nuclear Regulatory Commission, respectively);

(B) The technical data are of a type customarily transmitted with a prospective or actual quotation, bid, or offer (in accordance with established business practice); and

(C) The export will not disclose the detailed design, production, or manufacture, or the means of reconstruction, of either the quoted item or its product. Similarly, a quotation, bid, or offer for technical data or services must not disclose the detailed technical process involved.

NOTE: Neither this authorization nor its use means that the U.S. Government intends, or is committed, to approve an export license application for any commodity, plant or technical data that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers and in any contracts entered into pursuant to such quotations, bids, or offers provision relieving themselves of liability in the event that an export license (when required) is not approved by the Office of Export Licensing.

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[9] Section 776.10(a)(1)(vii) requires exporters of digital computer equipment to describe on their license application any software, including that shipped under General License GTDR, to be used with the equipment.

(iii) For definitions relating to computer software, see Advisory Note 12 in Supplement No. 3 to Part 779.

(2) No technical data may be exported under this general license to Country Groups Q, W, or Y or to Afghanistan, except:

(i) Software that is not explicitly controlled in Supplement No. 3 to Part 779, or that is not related to any commodity controlled for national security or nuclear non-proliferation reasons on the Commodity Control List, or that is not related to any commodity/technical data listed in paragraphs (c) or (d) of this section.

(ii) "Operation technical data" defined in paragraph (b)(1)(i) of this section, including software in object code explicitly listed in Supp. No. 3 to Part 779 and described on the license application for the commodity, but subject to the restrictions contained in paragraphs (c) and (d) of this section.

(iii) "Sales technical data" defined in paragraph (b)(1)(ii) of this section.

(3) The following technical data may be exported under this general license to Country Groups T and V, *except* to the People's Republic of China:

(i) "Sales technical data", as defined in paragraph (b)(1)(ii) of this section, but including "sales technical data" for a commodity identified by the code letter "A" following the Export Control Commodity Number (ECCN) on the Commodity Control List; and

(ii) "Operation technical data" as defined in paragraph (b)(1)(i) of this section, but including "operation technical data", for commodities listed in paragraph (d) of this section.

(4) The following technical data may be exported under this general license to the People's Republic of China:

(i) "Operation technical data" as defined in paragraph (b)(1)(i) of this section, but subject to the restrictions contained in paragraph (c) of this section;

(ii) "Sales technical data" as defined in paragraph (b)(1)(ii) of this section.

(5) Software updates that are intended for and are limited to correction of errors ("fixes" to "bugs" that have been identified) qualify for export under General License GTDR without written assurances to Country Groups Q, W, Y, T and V, Afghanistan, and the People's Republic of China, provided that the updates are being exported to the same consignee and do not enhance the functional capabilities of the initial software package.

(c) *Technical data restrictions applicable to all destinations.* No technical data[10] (other than operating and maintenance instructional material and "sales technical data" for export to and use in the countries listed in Supplement No. 2 to Part 373 and Canada) related to the following may be exported under this general license, and a validated export license is required for all destinations, *including Canada*, for export of technical data related to the following:

(1) Any commodity where the exporter knows or has reason to know that it will be used directly or indirectly in the following activities, whether or not it is specifically designed or modified for such activities (see § 778.3):

(i) Designing, developing, fabricating or testing nuclear weapons or nuclear explosive devices,[11,12] or

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[10] This restriction does not apply to data included in the foreign filing of a patent, provided such foreign filing of a patent application is in accordance with the regulations of the U.S. Patent Office (See § 779.3(c)).

[11] Commodities and technical data specifically designed or specifically modified for use in designing, developing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Munitions Control, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, commodities and technical data specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[12] Also see § 779.5(e) for special provisions relating to technical data for maritime nuclear propulsion plans and other commodities.

(ii) Designing, constructing, fabricating, or operating the following facilities, or components for such facilities[13]:

(A) Facilities for the chemical processing of irradiated special nuclear or source material;

(B) Facilities for the production of heavy water;

(C) Facilities for the separation of isotopes of source and special nuclear material; or

(D) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(2) Training of personnel for paragraph (c)(1) of this section.

(3) Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction; and specially designed parts, n.e.s.

(4) Porous nickel.

(5) Plants specially designed for the production of uranium hexafluoride (UF_6), and specially designed or prepared equipment (including UF_6 purification equipment) and specially designed parts and accessories therefor.

(6) Inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2000 hertz.

(7) Cylindrical tubing, raw, semifabricated, or finished forms, made of aluminum alloy (7000 series) maragine steel or high-strength titanium alloys (*e.g.*, Ti-6 Al-4 V, etc.) having the following characteristics:

(i) Wall thickness of ½ inch, or less; and

(ii) Diameter of 3 inches or more.

(8) Cylindrical rings, or single convolution bellows, made of high-strength steels having all of the following characteristics:

(i) Tensile strength equal to or greater than 150,000 psi;

(ii) Wall thickness of 3 millimeters or less; and

(iii) Diameter of 3 inches or more.

(9) Pipes, valves, fittings, heat exchangers, or magnetic, electrostatic or other collectors made of graphite or stainless steel, or of other materials coated in graphite, yttrium or yttrium compounds resistant to the heat and corrosion of uranium vapor.

(10) Centrifugal balancing machines, fixed or portable, horizontal or vertical, having *all* of the following characteristics:

(i) Suitable for balancing flexible rotors having a diameter of from 3 inches to 16 inches, and a length of 36 inches or more; and

(ii) Mass capability of from 2 to 50 lbs.; and

(iii) Capable of balancing to a residual imbalance of 0.001 in-lb./lb. per plane or greater; and

(iv) Capable of balancing in three more planes.

(11) Moisture and particulate separator systems covered by ECCN 1416A(g), as follows:

(i) Technical data for preventing water leakage around the filter stages; *and*

(ii) Technical data for integrating the components of such a system.

(d) *Restrictions applicable to all destinations except Canada.* No technical data relating to the following commodities or processes, other than technical data authorized for T and V destinations under paragraphs (b)(3) and (4) of this section[14] or certain technical data authorized to COCOM member countries as indicated in Supplement No. 4, paragraphs (7) and (8) may be exported under General License GTDR,[14a] and exports of these technical data to all destinations except Canada,[15] require a validated export license.[15A]—

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[13] Such activities may also require a specific authorization from the Secretary of Energy pursuant to section 57.b(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR Part 810.

[14] Data included in the foreign filing of a patent is also excluded from the restrictions set forth in § 779.4(d) if such foreign filing of a patent application is in accordance with the regulations of the U.S. Patent Office.

[14a] The availability of General License GTDR for exports of technical data to COCOM member nations, as indicated in paragraphs 7 and 8 of Supplement No. 4 to the this Part 779, is subject to the written assurance requirements provided in § 779.4(f)(2).

(1) Technical data including "specially designed software" for aircraft and helicopter airframes, aero-engines and related parts and components. (See paragraphs (6) through (8) of Supplement No. 4 to Part 779.)

(2) Electrical and electronic instruments specially designed for testing or calibrating the airborne direction finding, navigational, and radar equipment;

(3) Airborne electronic transmitters, receivers, and transceivers;

(4) Airborne electronic direction finding equipment;

(5) Airborne electronic or inertial navigation and radar equipment; [16]

(6) Watercraft of hydrofoil and hovercraft (air bubble) design;

(7) Submersible watercraft other than military or naval types; [17]

(8) Certain airborne multispectral infrared detection and tracking equipment (infrared scanners and their associated technology designed for military or space application remain under the export licensing jurisdiction of the Office of Munitions Control, Department of State);

(9) Infrared imaging equipment;

(10) Technical data (including processing conditions) and procedures for the regulation of temperature, pressure and/or atmosphere in autoclaves when used for the production of composites or partially processed composites using materials controlled by ECCN 1763A of the Commodity Control List and technical data specified in paragraph (b)(1)(i) of this section relating to equipment specified in ECCN 1312A for Country Groups Q, W, Y and Afghanistan;

(11) Technical data for floating drydocks, limited to the following:

(i) That portion of the design of a floating dock covered by ECCN 1425A(a) that relates to the incorporation of the three types of facilities described in the NOTE to ECCN 1425A(a); and

(ii) Design, production and use of onboard floating dock facilities covered by ECCN 1425A(b) that permit the operation, maintenance and repair of nuclear reactors;

(12) Military trainer aircraft, specified in ECCN 2460A, except reciprocating aircraft engines;

(13) Military instrument flight trainers;

(14) Technical data for metal-working manufacturing processes and specially designed "software" therefor (see Supplement No. 4 to Part 779).

(15) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (see Supplement No. 4 to Part 779);

(i) That portion of the design of a floating dock covered by ECCN 1425A(a) that relates to the incorporation of the three types of facilities described in the Note to ECCN 1425A(a); and

(ii) Design, production and use of onboard floating dock facilities covered by ECCN 1425A(b) that permit the operation, maintenance and repair of nuclear reactors;

(16) Data bases generated by the use of equipment controlled by ECCN 1363A;

(17) Technical data for application to non-electrical devices to achieve:

(i) Inorganic overlay coatings or inorganic surface modification coatings—(*a*) specified in column 3 of the

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[15] Only the restrictions set forth in § 779.4(c) apply to exports to technical data for use in Canada. In all other cases, an export of technical data for use in Canada may be made without either a validated or a general license. For reexport provisions applicable to Canada and other countries, see § 779.8(b) and (c).

[15A] Technical data relating to identified military aircraft, military helicopters and military propulsion systems are subject to the export licensing authority of the U.S. Department of State.

[16] Exports of technical data relating to the design, development, production or manufacture, of inertial navigation equipment, its related parts, components or subsystems, and exports of technical data relating to the repair of parts, components or subsystems of intertial navigational systems (including accelerometers and gyroscopes) not certified by the FAA or not used as an integral part of civil aircraft, are controlled by the Office of Munitions Control, Department of State.

[17] Technical data relating to military or naval submersible watercraft are subject to the export licensing authority of the U.S. Department of State.

Table set forth in Supplement No. 4 to Part 779, (*b*) on substrates specified in column 2 of that same Table, (*c*) by processes as defined in Technical Note (a) to (h) and specified in column 1 of that same Table, and specially designed software therefor; and

(18) Technical data for the design and production of commodities that are controlled for nuclear weapons delivery reasons (see § 776.18 and Supplement No. 4 of this part), including related software;

(19) Development and production technical data, including "specially designed software," for reciprocating diesel engine ground vehicle propulsion systems (see paragraph (5) of Supplement No. 4 to Part 779);

(20) Technical data including "specially designed software" for marine gas turbine engines covered under ECCN 1431A (see paragraph (9) of Supplement No. 4 to Part 779);

(21) Technical data for fibrous and filamentary materials and for composite structures and laminates as specified in paragraph (10) of Supplement No. 4 to Part 779; and

(22) Technical data including "specially designed software" for submersible systems, as follows, covered in ECCN 1417A; as follows:

(i) Air-independent power systems controlled by paragraph (h)(1), (h)(2) or (h)(3) in ECCN 1417A;

(ii) Subsystems controlled by paragraph (h)(1)(i), (h)(1)(ii), (h)(1)(iii), (h)(3)(i) or (h)(4) in ECCN 1417A; *and*

(iii) Subsystems described in paragraph (h)(2)(i), (h)(2)(ii) or (h)(2)(iii) in ECCN 1417A.

(23) Any other commodity under the export control jurisdiction of the Office of Export Licensing, if such commodity is not covered by an entry on the Commodity Control List.

(e) *Restrictions applicable to Republic of South Africa*—(1) *General prohibition.* No technical data may be exported or reexported to the Republic of South Africa under this General License GTDR where the exporter or reexporter knows or has reason to know that the data or any products of the data are for delivery, directly or indirectly, to or for use by or for military or police entities in South Africa or for use in servicing equipment owned, controlled or used by or for such entities. As used in this paragraph (e), the term "any products of the data" includes the direct product[18] of the data and any subsequent products of the direct product. No technical data for use in servicing or manufacturing computers, and no computer software, may be exported or reexported to the Republic of South Africa under this General License GTDR where the exporter or reexporter knows or has reason to know that the data will be made available to or for use by, or is intended to be used for apartheid-enforcing entities identified in Supplement No. 1 to Part 785.

(2) *Written assurance.* In addition to any written assurances that may be required by paragraph (f) of this section, no export or reexport of technical data, including computer software, may be made to South Africa under this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product of the data will be made available to or for use by or for military or police entities of the Republic of South Africa. If the technical data is intended to service or manufacture computers or consists of computer software, the written assurance must also state that the data will not be made available to or for use by, and neither the data nor the direct product of the data is intended to be used for, the apartheid-enforcing entities identified in Supplement No. 1 to Part 785. To facilitate this assurance, the potential exporter shall provide a current copy of Supplement No. 1 to Part 785 to the intended recipient at the time the written assurance is requested.

(f) *Written assurance requirements*—(1) *Requirement of written assurance for certain data, services, and materials.* No export of technical data of the kind described in paragraph (f)(1)(i) of this section may be made under the provisions of this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product[19] thereof is intended to be shipped, either directly or indirectly, to Country Group Q, S, W,[20] Y, or Z, or Afghanistan or the People's Republic of China, except as provided in paragraph (f)(1)(ii) of this section. The required assurance may be in the form of a letter or other written communication from the importer evidencing such intention, or a licensing agreement that restricts disclosure of the technical data to use only in a country other than Country Group Q, S, W, Y, or Z, or Afghanistan or the People's Republic of China and prohibits shipments of the direct product[19] thereof by the licensee to Country Group Q, S, W, Y, or Z, or Afghanistan or People's Republic of China. An assurance included in a licensing agreement will be acceptable for all exports made during the life of the agreement. If such assurance is not received, this general license is not applicable and a validated export license is required. An application for such validated license shall include an explanatory statement setting forth the reasons why such assurance cannot be obtained. In addition, this general license is not applicable to any export of technical data of the kind described in paragraph (f)(1)(i) of this section if, at the time of export of the technical data from the United States, the exporter knows or has reason to believe that the direct product to be manufactured aboard by use of the technical data is intended to be exported or reexported, directly or indirectly, to Country Group Q, S, W, Y, or Z, or Afghanistan or the People's Republic of China.

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[18] The term "direct product," as used in this paragraph, is defined to mean the immediate product (including processes and services) produced directly by use of the technical data.

(i) Technical data relating to the following commodities:

(A) Electronic computers, if the technical data is software listed in Supplement No. 3 to Part 779. (Software not listed in Supplement No. 3 to Part 779 or any ECCN entry, or in paragraph (c) or (d) may be exported to Country Groups T & V, without written assurance.)

(B) Pyrolitically-derived materials formed on a mold, mandrel or other substrate from precursor gases that decompose in the 1,573K (1,300 °C) to 3,173K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa (including the composition of precursor gases, flow rates, and process control schedules and parameters);

(C) Other gravity meters (gravimeters); and parts and accessories, n.e.s.;

(D) Other transonic, supersonic, hypersonic and hypervelocity wind tunnels and devices; and parts and accessories, n.e.s.;

(E) Watercraft of 65 feet and over in overall length, designed to include motors or engines of 600 horsepower or over and greater than 45 displacement tons;

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[19] The term "direct product," as used in this sentence and in this context only, is defined to mean the immediate product (including processes and services) produced directly by use of the technical data, except that petroleum or chemical products other than molecular sieves or catalysts are not included in this definition. The coverage of the term does not extend to the results of the use of such "direct product." An example of the direct product of technical data is reforming process equipment designed and constructed by use of the technical data exported, but the aromatics produced by the reforming process equipment are not immediate or direct products of these technical data. However, if the technical data are a formula for producing aromatics, the aromatics, although they are immediate products of the data, are not included in this definition of direct product, since they are petroleum products. Conversely, if the technical data are a formula for producing either molecular sieves or catalysts, the foreign-produced molecular sieves and catalysts are including in the definition of direct product.

[20] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971 and referring to Country Group W continue to apply to Romania as well as Poland. Effective June 2, 1980, Hungary was added to Country Group W, which at that time included only Poland. Assurances executed prior to June 2, 1980 and referring to Country Group Y continue to apply to Hungary. Assurances executed on or after June 2, 1980 and referring to Country Group W apply to Hungary as well as Poland.

Footnotes [21] through [24] [Reserved].

(F) Methyl methacrylate, cross-linked, hot stretched, clear, film, sheeting, or laminates;

(G) Doppler sonar navigation systems;

(H) Aerial camera film, sensitized and unexposed, as follows: (*1*) having spectral sensitivities at wavelengths greater than 7,500 Angstroms or at wavelengths less than 2,000 Angstroms; or (*2*) having resolving powers (using a Test-Object Contrast of 1,000:1) of 200 line pairs/mm or more or with a base thickness before coating of 0.0025 inch or less;

(I) Continuous tone aerial duplicating film, sensitized and unexposed, having resolving powers (using a Test-Object Contrast of 1,000:1) of 300 line pairs/mm or more;

(J) Instrumentation and/or recording film, sensitized and unexposed, having photo-recording sensitivities (as based on the reciprocal of the tungsten exposure in meter-candle-seconds at an exposure time of 0.0001 second) of 125 or more and a resolving power (using a Test-Object Contrast of 1,000:1) of 55 line pairs/mm or more and with a base thickness before coating of 0.004 inch or less and capable of being processed in solutions with alkalinities of pH 10 or above at temperatures greater than 85° F;

(K) Technical data/software specifically identified in ECCN 1391A. (Operation software defined by paragraph (b)(1) shall be described in the license applications for these commodities.);

(L) Technical data for the design and production (except assembly and testing) of two-axis numerical control units with an "embedded" computer;

(M) Other high speed continuous writing, rotating drum cameras capable of recording at rates in excess of 2,000 frames per second; and parts and accessories, n.e.s.;

(N) Other 16 mm high speed motion picture cameras capable of recording at rates in excess of 2,000 frames per second; and parts and accessories, n.e.s.;

(O) Single crystal sapphire substrates:

(P) [Reserved]

(Q) Terminal, multiplex or modem equipment designed for or used as components, accessories or sub-assemblies of frequency, time or space division telephone-switching systems employing digital transmission techniques designed at a data signalling rate exceeding 8.5 megabits per second.

(g) Software and other technical data listed under ECCN 1391A on the Commodity Control List may be exported or reexported under General License GTDR only to Country Groups T & V, except Afghanistan and the People's Republic of China, subject to the written assurance requirements contained in paragraph (f)(1)(i)(K) of this section. Such software and technical data require a validated license for export to any other Country Group. The export or reexport of all other software and technical data listed under any other ECCN on the Commodity Control List requires a validated license to any Country Group.

(h) *Restrictions applicable to technical data related to crime control and detection commodities.* The export of technical data related to crime control and detection instruments and equipment under General License GTDR is authorized *only* to Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Turkey, and the United Kingdom. An individual validated export license is required for the export of such technical data to any other destination unless the export is authorized under General License GTDA (§ 779.3). (See § 776.14 for a list of the Commodity Control List items affected by the validated license requirement.)

(i) *Additional restrictions applicable to the People's Republic of China.* In addition to the prohibitions of paragraphs (c) and (d) of this section, technical data related to commodities identified on the Commodity Control List (Supplement No. 1 to § 799.1) as controlled for reasons of national security, nuclear non-proliferation, or crime control may be exported to the People's Republic of China under General License GTDR. In addition, software covered by Supplement 3 to

Part 779 requires a validated license for export to the PRC. These prohibitions do not apply, however, to technical data described in paragraph (b) of this section.

[43 FR 56650, Dec. 4, 1978. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 779.4, see List of CFR Sections Affected in the Finding Aids section of this volume.

§ 779.5 Validated license applications.

(a) *General.* No technical data, other than that exportable without license to Canada or under general license to other destinations, may be exported from the United States without a validated export license. Such validated export licenses are issued by the Office of Export Licensing upon receipt of an appropriate export application or reexport request. An application for a technical data license shall consist of:

(1) Form FC-419, Application for Export License, accompanied by

(2) A letter of explanation described in paragraph (d) of this section.

(b) *Application Form.* Form ITA-622P shall be completed as provided in § 772.4, except that Items 9(a), 9(c) and 11 shall be left blank. In Item 9(b), "Description of Commodity or Technical Data," enter a general statement which specifies the technical data (*e.g.*, blueprints, manuals, etc.). In Purpose."

(c) [Reserved]

(d) *Letter of explanation.* Each application shall be supported by a comprehensive letter of explanation in duplicate. This letter shall set forth all the facts required to present to the Office of Export Licensing a complete disclosure of the transaction including, if applicable, the following:

(1) The identification of all parties to the transaction;

(2) The exact project location where the technical data will be used;

(3) The type of technical data to be exported;

(4) The form in which the export will be made;

(5) The uses for which the data will be employed;

(6) An explanation of the process, product, size, and output capacity of the plant or equipment, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the "technical scope");

(7) The availability abroad of comparable foreign technical data.

(e) *Special provisions*—(1) *Maritime nuclear propulsion plants and related commodities.* [25] These special provisions are applicable to technical data relating to maritime (civil) nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities. Every application for license to export technical data relating to any of these commodities shall include the following:

(i) A description of the foreign project for which the technical data will be furnished;

(ii) A description of the scope of the proposed services to be offered by the applicant, his consultant(s), and his subcontractor(s), including all the design data which will be disclosed;

(iii) The names, addresses and titles of all personnel of the applicant, his consultant(s) and his subcontractor(s) who will discuss or disclose the technical data or be involved in the design or development of the technical data;

(iv) The beginning and termination dates of the period of time during which the technical data will be discussed or disclosed and a proposed time schedule of the reports which the applicant will submit to the U.S. Department of Commerce, detailing the technical data discussed or disclosed during the period of the license;

(v) The following certification:

> I (We) certify that if this application is approved, I (we) and any consultants, subcontractors, or other persons employed or retained by us in connection with the project thereby licensed will not discuss with or disclose to others, directly or indirectly, any technical data relating to U.S. naval nuclear propulsion plants. I (We) further certify that I (we) will furnish to the U.S. Depart-

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[25] See § 779.8(a) which sets forth provisions prohibiting exports and reexports of certain technical data and products manufactured therefrom.

ment of Commerce all reports and information which it may require concerning specific transmittals or disclosures of technical data pursuant to any license granted as a result of this application;

(vi) A statement of the steps which the applicant will take to assure that personnel of the applicant, his consultant(s) and his subcontractor(s) will not discuss or disclose to others technical data relating to U.S. naval nuclear propulsion plants; and

(vii) A written statement of assurance from the foreign importer that unless prior authorization is obtained from the Office of Export Licensing, the importer will not knowingly export directly or indirectly to Country Group Q, W[26], Y or Z, the People's Republic of China or Afghanistan, the direct product of the technical data. However, if the U.S. exporter is not able to obtain this statement from the foreign importer, the U.S. exporter shall attach an explanatory statement to his license application setting forth the reasons why such an assurance cannot be obtained.

(2) *Other commodities.*[25] For all license applications to export to any destination, other than Country Group Q, W, Y or Z, the People's Republic of China or Afghanistan, technical data relating to any of the commodities set forth below, an applicant shall attach to the license application a written statement from his foreign importer assuring that, unless prior authorization is obtained from the Office of Export Licensing, the importer will not knowingly reexport the technical data to any destination or export the direct product of the technical data, directly or indirectly, to Country Group Q, W, Y or Z, the People's Republic of China or Afghanistan. However, if the U.S. exporter is not able to obtain the required statement from his importer, the exporter shall attach an explanatory statement to his license application setting forth the reasons why such an assurance cannot be obtained. The special provisions set forth in this paragraph are applicable to technical data concerning the following:

(i) Commodities where the exporter knows or has reason to know that the item will be used directly or indirectly, whether or not specifically designed for developing or testing nuclear weapons or nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 778.3, or training of personnel for any activity listed above;

(ii) Neutron generators employing the electrostatic acceleration of ions and designed for operation without an external vacuum system and specially designed parts and accessories for such neutron generators (Export Control Commodity No. 72970);

(iii) Porous nickel;

(iv) Civil aircraft, civil aircraft equipment, parts, accessories, or components identified by the code letter "A," "B," "C," or "M" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 799.1);

(v) Electrical and electronic instruments (Export Control Commodity Nos. 7295 and 7299) specially designed for testing or calibrating the airborne direction finding, navigational, and radar equipment (Export Control Commodity Nos. 724 and 7295);

(vi) Airborne electronic transmitters, receivers, and transceivers (Export Control Commodity No. 724);

(vii) Airborne electronic direction finding equipment (Export Control Commodity No. 724);

(viii) Airborne electronic navigation and radar equipment (Export Control Commodity Nos. 724 and 7295);

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[26] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971, and referring to Country Group W continue to apply to Romania as well as Poland. Effective June 2, 1980, Hungary was added to Country Group W, which at that time included only Poland. Assurances executed prior to June 2, 1980, and referring to Country Group Y continue to apply to Hungary. Assurances executed on or after June 2, 1980 and referring to Country Group W apply to Hungary as well as Poland.

(ix) Watercraft of hydrofoil and hovercraft (air bubble) design[27];

(x) Submersible watercraft other than military or naval types;[28]

(xi) Plants specially designed for the production of uranium hexafluoride (UF_6), and specially designed or prepared equipment (including UF_6 purification equipment) and specially designed parts and accessories therefor;

(xii) Inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2000 hertz;

(xiii) Cylindrical tubing, raw, semifabricated, or finished forms, made of aluminum alloy (7000 series) maraging steel or high-strength titanium allows (e.g., Ti-6 Al-4 V, etc.) having the following characteristics:

(A) Wall thickness of ½ inch, or less;

(B) Diameter of 3 inches or more;

(xiv) Cylindrical rings, or single convolution bellows, made of high-strength steels having all of the following characteristics:

(A) Tensile strength equal to or greater than 150,000 psi;

(B) Wall thickness of 3 millimeters or less; and

(C) Diameter of 3 inches or more;

(xv) Pipes, valves, fittings, heat exchangers, or magnetic, electrostatic or other collectors made of graphite or stainless steel, or of other materials coated in graphite, yttrium or yttrium compounds resistant to the heat and corrosion of uranium vapor; and

(xvi) Any other commodity under the export control jurisdiction of the Office of Export Licensing if such commodity is not covered by an entry on the Commodity Control List.

(3) *Computer software.* Applications to export software subject to validated export licenses should provide the information detailed in § 776.10(a)(1)(vii), and in addition, should identify the location, origin, and model of the equipment with which the software will be used. For software, the applicant should indicate on the application the Commodity Control List Processing Code for the equipment with which the software will be used.

(f) *Validity period and extension*—(1) *Initial validity.* Validated licenses covering exports of technical data will generally be issued for a validity period of 24 months. Upon request, a validity period exceeding 24 months may be granted where the facts of the transaction warrant it and the Office of Export Licensing determines that such action would be consistent with the objectives of the applicable U.S. export control program. Justification for a validity period exceeding 24 months should be provided in accordance with the procedures set forth in § 772.9(d)(2) for requesting an extended validity period with a license application. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

(2) *Extensions.* A request to extend the validity period of a technical data license shall be made on Form ITA-685P in accordance with the procedures set forth in § 772.12(a). The request shall include on Form ITA-685P, in the space entitled "Amend License to Read as Follows," whether the license has been previously extended and the date(s) and duration of such extension(s). The Office of Export Licensing will make the final decision on what extension beyond 24 months, if any, should be authorized in each case. (See § 779.8(c)(1) for validity period extensions for reexports of technical data.)

[35 FR 9178, June 12, 1970, as amended by Amdt. 14, 36 FR 3358, Feb. 23, 1971; Amdt. 20, 36 FR 8371, May 5, 1971; 40 FR 23994, June 4, 1975; 42 FR 46509, Sept. 16, 1977; 45 FR 37184, June 2, 1980; 45 FR 37417, June 3, 1980; 45 FR 80485, Dec. 5, 1980; 46 FR 869, Jan. 5, 1981; 46 FR 38349, July 27, 1981; 47 FR 5211, Feb. 4, 1982; 48 FR 54000, Nov. 30, 1983; 51 FR 12840, Apr. 16, 1986; 51 FR 40159, Nov. 5, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

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[27] This commodity is not listed on the Commodity Control List since it is under the export control jurisdiction of the U.S. Maritime Administration. However, technical data relating to this commodity are under the export control jurisdiction of the Office of Export Licensing.

[28] Technical data relating to military or naval submersible watercraft are subject to the export licensing authority of the U.S. Department of State. See Supplement No. 2 to Part 770 of this subchapter.

§ 779.6 Exports under a validated license.

(a) *Use of validated licenses*—(1) *Retention of license.* The validated technical data license need not be presented to the customs office or post office but shall be retained and made available for inspection in accordance with the provisions of § 787.13 of this subchapter.

(2) *Return of license.* Export licenses shall be returned promptly to the Office of Export Licensing upon revocation, suspension, or expiration of the validity period. Used licenses shall be returned when fully used. Unused and partially used licenses shall be returned when the exporter determines that he will not make any shipment, or any further shipment, thereunder or upon expiration, whichever comes first.

(b) *Reports on exports*—(1) *Country Group S, T, or V except Afghanistan.* With respect to a license used to export technical data to Country Group S, T, V, except Afghanistan, when the license is returned, as provided in paragraph (a)(2) of this section, the exporter shall submit a statement indicating:

(i) When the technical data were exported or when the technical services were rendered; and

(ii) Whether the export was total or partial.

(iii) For exports to the People's Republic of China, the exporter also shall submit a statement indicating the nature of the transaction (*e.g.*, a sale of technical data, performance of technical services, a technical licensing agreement, or a technology exchange agreement).

(2) *Country Group Q, W, Y, or Afghanistan.* With respect to a license used to export technical data to Country Group Q, W, Y, or Afghanistan, when the license is returned, as provided in paragraph (a)(2) of this section the exporter shall submit a statement indicating:

(i) When the technical data were exported or when the technical services were rendered;

(ii) Whether the export or service was total or partial;

(iii) The nature of the transaction (e.g., a sale of technical data, performance of technical services, a technical licensing agreement, a technology exchange agreement);

(iv) The nature of the payment received or to be received by the U.S. exporter (e.g., pecuniary or other consideration); and

(v) The actual or estimated price of the technical data exported, or services rendered, or the actual or estimated dollar value of any other consideration received or to be received. (This should include the payment received or to be received for engineering and for any other services when rendered, as well as for the royalty or other payment received or to be received for a design or process authorized to be used.)

[35 FR 9178, June 12, 1970, as amended by Amdt. 20, 36 FR 8372, May 5, 1971; Amdt. 43, 37 FR 17706, Aug. 30, 1972; 45 FR 37417, June 3, 1980; 45 FR 84027, Dec. 22, 1980; 48 FR 53067, Nov. 23, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 779.7 Amendments.

Requests for amendments shall be made in accordance with the provisions of § 772.11. Changes requiring amendment include any expansion or upgrade of the technical scope that was described in the letter of explanation, as approved or modified on the export license.

[51 FR 40159, Nov. 5, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 779.8 Reexports of technical data and exports of the product manufactured abroad by use of United States technical data.

(a) *Prohibited exports and reexports.* Unless specifically authorized by the Office of Export Licensing, or otherwise authorized under the provisions of paragraph (b) of this section, no person in the United States or in a foreign country may:

(1) Reexport any technical data imported from the United States, directly or indirectly, in whole or in part, from the authorized country(ies) of ultimate destination;

(2) Export any technical data from the United States with the knowledge that it is to be reexported, directly or indirectly, in whole or in part, from

the authorized country(ies) of ultimate destination; or

(3) Export or reexport to Country Group Q, S, W, Y or Z, the People's Republic of China or Afghanistan any foreign produced direct product of U.S. technical data, or any commodity produced by any plant or major component thereof that is a direct product of U.S. technical data, if such direct product or commodity is covered by the provisions of § 779.4(f) or § 779.5(e) (1) or (2); or

(b) *Permissive reexports*—(1) *Exportable under General License GTDA or GTDR.* Any technical data which have been exported from the United States may be reexported from any destination to any other destination provided that, at the time of reexport, the technical data may be exported directly from the United States to the new country of destination under General License GTDA or GTDR and provided that all of the requirements and conditions for use of these general licenses have been met.

(2) *Country Groups Q, W, and Y.* When the Office of Export Licensing has specifically authorized the export of a commodity from the United States to a destination in Country Group P, Q, W, Y, or Afghanistan, or the reexport of a U.S.-origin commodity from any foreign country to a destination in Country Group Q, W, Y, or Afghanistan, technical data such as manuals, instructional sheets, or blueprints as described in, and subject to the conditions of, § 779.4(b)(1) may be sent to the same destination as part of the same transaction without separate specific authorization by the Office of Export Licensing.

(3) *COCOM Authorization.* Separate specific authorization by the Office of Export Licensing to export or reexport any foreign produced direct product of U.S. technical data is not required if *all* of the following conditions are met:

(i) The commodities being exported:

(A) Are identified by "A" on the CCL,

(B) Are *not* included in the Advisory Notes in any entry on the Commodity Control List (Supplement No. 1 to § 799.1), (the Advisory Notes for the People's Republic of China do *not* apply in meeting this requirement).

(C) Are valued at more than $4,000 (except that commodities in CCL entries 1548A, 1555A, and 1781A, and entries beginning with the digits 2 and 3, are eligible regardless of value), and

(D) If included in entry 1565A, have at least one parameter falling in the extreme right-hand, *i.e.* (d), column of boxes on Form BXA-6031P, Computer System Parameters.

(ii) The export or reexport is from a COCOM participating country, *i.e.*, Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, or the United Kingdom;

(iii) The export or reexport is made in accordance with the conditions of the licensing authorization issued by the applicable COCOM participating country;

(iv) The export or reexport is to a country in Country Group Q, W or Y, or the People's Republic of China; and

(v) The transaction has received unanimous approval in COCOM (see § 774.3(e)).

(4) *People's Republic of China.* Separate specific authorization by Export Administration is not required to reexport software from a COCOM country to the People's Republic of China if that software meets the requirements set forth in the Advisory Note for the People's Republic of China in Supplement No. 3 to Part 779 and if the license has been approved by a COCOM country.

(c) *Specific authorization to reexport*—(1) *Submission of request for reexport authorization.* Requests for specific authorization to reexport technical data or to export any product thereof, as applicable, shall be submitted on Form ITA-699P, Request To Dispose of Commodities or Technical Data Previously Exported (OMB approval No. 0625-0009), to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

(See Supplement No. 1 to Part 774 for instructions on completing the form.) If Form ITA-699P is not readily available, a request for specific authorization to reexport technical data or to export any product thereof, as applicable, may be submitted by letter. The letter shall bear the words "Technical Data Reexport Request" immediately below the heading or letterhead and contain all the information required by § 779.5(d). Authorization to reexport technical data or to export the product thereof, if granted, will generally be issued with a validity period of 24 months on Form ITA-699P, or by means of a letter from the Office of Export Licensing. Any request for extension of the validity period shall be requested in accordance with § 774.5(b), and shall specify the period for which additional validity is required. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

(2) *Return of reexport authorization.* Reexport authorizations shall be returned promptly to the Office of Export Licensing upon revocation, suspension, or expiration of the validity period. Used authorizations shall be returned when fully used. Unused and partially used authorizations shall be returned when the person authorized to reexport determines that he will not make any shipment, or further shipment, thereunder, or upon expiration of the authorization, whichever comes first. After the reexport of the technical data has been completed, the Office of Export Licensing shall also be given a notice in writing indicating:

(i) When the technical data were reexported or when the technical services were rendered; and

(ii) Whether the reexport or service was total or partial.

(iii) For exports to the People's Republic of China, a notice also is required indicating the nature of the transaction (*e.g.*, a sale of technical data, performance of technical services, a technical licensing agreement, a technology exchange agreement, or the rendering of technical services).

(3) *Reexports to Country Group Q, W, Y, or Afghanistan.* In addition, if the technical data had been reexported to Country Group Q, W, Y, or Afghanistan, the written notice shall specify:

(i) The nature of the transaction; e.g., a sale of technical data, performance of technical services, a technical licensing agreement, a technology exchange agreement, or the rendering of technical services;

(ii) The nature of the payment received, or to be received, by the U.S. exporter; e.g., pecuniary or other consideration; and

(iii) The actual or estimated price of the technical data reexported or services rendered, or the actual or estimated dollar value of any other consideration received or to be received. (This should include the payment received or to be received for engineering and for any other services when rendered, as well as for the royalty or other payment received or to be received for a design or process authorized to be used.)

(d) *Effect of foreign laws.* No authority granted by the U.S. Office of Export Licensing, or under the provisions of the U.S. Export Administration Regulations, to reexport technical data or export a product thereof shall in any way relieve any person from his responsibility to comply fully with the laws, rules, and regulations of the country from which the reexport or export is to be made or of any other country having authority over any phase of the transaction. Conversely, no foreign law, rule, regulation, or authorization in any way relieves any person from his responsibility to obtain such authorization from the U.S. Office of Export Licensing as may be required by the U.S. Export Administration Regulations.

[35 FR 9178, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 779.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 779.9 Commercial agreements with certain countries.

Pursuant to section 5(j) of the Export Administration Amendments Act of 1979, as amended, any non-governmental U.S. person or firm that enters into an agreement with any agency of the government of a controlled country (Country Groups Q, W, Y, and the People's Republic of China), which agreement encourages technical cooperation and is intended to result in the export from the U.S. to the other party of U.S.-origin technical data (except under General License GTDA or General License GTDR as provided under the provisions of § 779.4(b) (1) and (2) of this part), shall submit those portions of the agreement that include the statement of work and describe the anticipated exports of data to the Office of Technology and Policy Analysis, Room 4054, P.O. Box 273, Washington, DC 20044. This material shall be submitted no later than 30 days after the final signature on the agreement.

(a) This requirement does not apply to colleges, universities and other educational institutions.

(b) The submission required by this section does not relieve the exporter from the licensing requirements for controlled technical data and goods.

(c) Acceptance of a submission does not represent a judgment as to whether Export Administration will or will not issue any authorization for export of technical data.

[51 FR 15316, Apr. 23, 1986; 51 FR 16296, May. 2, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 779.10 Other applicable provisions.

As far as may be consistent with the provisions of this part, all of the other provisions of the Export Administration Regulations shall apply equally to exports of technical data and to applications for licenses and licenses issued under this part.

[35 FR 9178, June 12, 1970. Redesignated at 51 FR 15316, Apr. 23, 1986. Further redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 1—TECHNICAL DATA INTERPRETATIONS

1. Technology based on U.S.-origin technical data. U.S.-origin technical data does not lose its U.S.-origin when it is redrawn, used, consulted, or otherwise commingled abroad in any respect with other technical data of any other origin. Therefore, any subsequent or similar technical data prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or utilizes any U.S.-origin technical data, is subject to the same U.S. Export Administration Regulations that are applicable to the original U.S.-origin technical data, including the requirement for obtaining Office of Export Licensing authorization prior to reexportation.

2. Distinction between General and Validated License requirements for shipment to QWY destinations of technical data and replacement parts.

A number of exporters have recently asked where the line is drawn between general license and validated license exports to PQWY destinations of technical data related to equipment exports.

The export of technical data under validated license is authorized only to the extent specifically indicated on the face of the license. The only data related to equipment exports that can be provided under general license is the publicly available data authorized by General License GTDA, or the assembly, installation, maintenance, repair, and operation data authorized by General License GTDR.

The following questions and answers are intended to further clarify this matter, as well as related problems involving other general licenses. These are clarifications only. Their issuance in no way affects the suspension of validated licenses for exports to the USSR of Jan. 11, 1980 (45 FR 3027).

Question A: Can we send technicians to repair equipment even though we can no longer supply parts due to suspension or revocation of our validated export license?

Answer: You can make repairs only to the extent the technical know-how utilized by the technicians does not exceed that contained in the manuals and instructions provided with the equipment under GTDR. Under GTDR, the technical data must be transmitted within one year of shipment of the equipment. Once the GTDR data is transmitted, subsequent service visits can be made at any time and are not restricted to the first year after shipment, but the services performed must be based solely on the data provided under GTDR.

Question B: Must we continue to fulfill visitation and reporting requirements imposed by our suspended (or revoked) validated export licenses even though we can no longer provide parts for repairs we have normally made during these visits?

Answer: Every effort must be made to continue visitations. If your technicians are not permitted to visit the site or are otherwise prevented from fulfilling your visitation and reporting obligations, you should present evidence of this with your visitation report.

Question C: We have completed a plant, fully utilizing the licenses we were issued for technical data and equipment. For contractual and warranty reasons, our technicians remain on site. Can they continue to assist and advise the customer even though we no longer have a valid export license?

Answer: They may advise and assist, but only to the extent permitted by GTDA or GTDR. If the consignee has been furnished information on installation, operation, maintenance, or repair of equipment, your technicians can repeat that information or perform the needed work, provided they do not exceed the GTDR limitations. Your technicians can, for instance, monitor the operation of machines to assure that they are not misused in any way that could result in unfounded warranty claims and possible arbitration. However, your personnel may not perform plant operations or repair functions utilizing technical data requiring a validated license.

Question D: We have been setting up a turnkey plant. The equipment is there but needs to be installed. Can we install the machines and teach the customer how to run them even though our license has been suspended (or revoked)?

Answer: Individual machines may be installed and put into operating order, but only to the extent permitted by GTDR. Instruction or assistance in combining the individual machines to perform the process for which the plant was intended, however, is not covered by the general license and this service cannot be performed while the requisite validated license for technical data is suspended.

In determining what constitutes an individual machine, exporters should consider as separate machines each of the basic pieces of equipment that join to provide a manufacturing process, but need not separate items such as machine tool/controller combinations or computer mainframe/peripheral systems designed and sold as functional units.

Question E: If a validated export license is suspended, can a U.S. manufacturer have its field technicians install a product that was exported prior to the suspension?

Answer: If installation of the product involves no more knowledge than could be absorbed by a competent technician from manuals, instructions, and drawings that normally are delivered with the product under GTDR (i.e., necessary for assembly, installation, maintenance, repair, or operation) then the manufacturer's field technicians may install the product. If the field engineers would have to exceed this limitation to install the equipment, then they may not do so. In no case can the field engineers go beyond installation of individual machines to reveal how machines relate to each other to perform a manufacturing process, since process technology is subject to validated license.

Question F: We applied for a license to export equipment, received a license, and shipped. Subsequently, all validated licenses for that destination were suspended. In our formal application, we described a list of activities that would be required to complete this consolidated business transaction, such as:

Detailed training schedule for the customer's technical personnel, for maintenance and operation of the equipment;

Direct support by our engineers for a period of several years to assure proper procedures and use of the equipment;

A contract for back-up maintenance and repair of equipment, until the customer's engineers gained sufficient experience to handle the job; and

A contract for study and analysis and design of their total plant (or a particular department) equipment requirements.

When we got the license for the export of equipment we understood that the license covered the total transaction and permitted the undertaking of the various ancilliary activities as represented in our application.

We have just started these activities, and are obliged under our contract to continue performance even though the license is suspended.

How does the suspension order affect our continued performance, where the equipment is already at the customer's facility waiting for our engineers to begin work and also train the customer's personnel?

Answer: In the situation you describe, it is not entirely clear how much of your work performance and training is covered by the suspension of your license. It seems likely that a good portion of the work should have been subject to a separate validated technical data license, which would be subject to the general suspension of validated licenses. As you did not approach the transaction (from a licensing procedure viewpoint) in this manner, we will need to review the case to determine what activities are directly related to the provision of technical data under GTDR (i.e. required for installation, assembly, maintenance, repair, and operation of the equipment shipped) and which activities go beyond this definition and will require a separate technical data approval for you to continue work.

Question G: Our engineers sometimes provide technical advice on repair situations by telephone from a Western country to the customer in a country where our validated licenses have been suspended (or revoked). This is particularly likely to occur in difficult situations, where the customer will describe his problem in technical detail to our engineer, and our engineer tells him, based on experience and access to more complete equipment history information, where to look for the error. This is an exchange of information, where we also gain knowledge of specific problems with the equipment.

Can this procedure be viewed as GTDR information necessary for the repair of installed equipment?

Answer: This is a reasonable activity that may be covered by GTDR, subject to the restriction that it may not involve technical information beyond the scope provided in the manuals and instructions originally given to the customer: *i.e.* the exchange of information must have as its base of reference the knowledge as provided in those manuals and instructions. The exchange may not, for example, go into detail of component design or engineering of a specific standard part, where the manual does not provide such technical detail.

Provision of such advice may be made at any time, provided it is based solely on GTDR information that was furnished within one year of the equipment export.

The above clarification would not only apply to a telephone call from a Western country, but would also be applicable for on-site service calls where the engineer is at the customer location.

Question H: Our customer installation in a country where our validated licenses have been suspended (or revoked) uses certain standard computer programs shipped sometime ago under validated license. The customer normally receives a programming service under warranty-type contract provisions to receive error corrections for these programs. When he has a problem, he identifies it to us (often via a magnetic tape) and a correction (revised program instruction) is sent back to the customer. This exchange is usually mutually advantageous, as we gain from customer experiences and he receives assistance in "fixing" his problem.

Can these exchanges be made under a general license? Can periodic updates (consolidated correction of errors) be provided to the customer?

Answer: Provided this is routine error correction with no new facilities or performance enhancements provided above the original program specifications, it can be provided either under GLR (e.g. a "faulty" tape sent to the U.S. and corrected tape sent back to the customer), or under GTDR. These general licenses are available only for one year following export of the equipment, unless extended by the Office of Export Licensing.

Question I: We are required by our contract to provide for our equipment installed in a country where our validated licenses have been suspended (or revoked), even after warranty period, engineering changes based on continuing experience with and improvements to that equipment. These changes are for the purpose of, *e.g.*, assuring operation of the machines to the original equipment specifications, removing a particular error-prone condition, or in some cases for the safety of user or maintenance personnel. The transfer of technical data and in some instances new or exchange parts are involved. We consider some of these changes "mandatory" where safety is concerned.

Can we provide the technical data for this purpose under GTDR if extended beyond the one year limitation period, and can the requisite parts be provided under GLR provisions, where there is no charge to the customer?

Answer: This technical data may be exported provided it does not exceed the limitations of GTDR. However, formal waiver of the one year limitation must be obtained where such continued shipments are foreseen.

The provision of parts under GLR is restricted to warranty situations within one year of export. "Mandatory changes" provided under warranty at no charge are considered an appropriate use of GLR. We would consider waiving the one-year limit for export of parts under GLR based on the merits of the individual case.

To request extension of the time limit under GTDR or GLR, the applicant should submit a letter, in duplicate, to the Director, Office of Export Licensing, Export Administration, Room 1617M, U.S. Department of Commerce, Washington, DC 20230. The letter should specify the export license number, the date of export of the equipment, the reason the extension is needed, whether GTDR, GLR, or both should be extended, and the period of time for which the extension is desired. Extensions may not exceed one year, but further extensions may be sought if necessary. If approved, OEL will validate the copy of the letter and return it to the applicant.

Question J: Our engineers, in installing or repairing equipment, use techniques (experience as well as proprietary knowledge of the internal componentry or specifications of the equipment) that exceed what is provided in the standard manuals or instructions (including training) given to the Soviet customer. In some cases, it is also a condition of the license that such information provided to the customer be constrained to the minimum necessary for normal installation, maintenance and operation situations.

Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of GTDR, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technical data to the customer personnel?

Answer: As defined in § 779.1, export of technical data includes release of U.S. origin data in a foreign country, and "release" includes "application to situations abroad of personal knowledge or technical experience acquired in the United States." As the release of technical data in the circumstances described here would exceed that permitted under GTDR, a validated export license would be required even though the technician could apply the data without disclosing it to the customer.

Question K: We shipped equipment prior to the suspension (or revocation) of our validated licenses, and had planned according to our normal business practices to train customer engineers to maintain that equipment. The training is contractual in nature, provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under general license authority?

Answer: Provided that this is your normal training, and involves technical data contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of § 779.4, the training may be provided within the limits of General License GTDR. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technical data to the customer's engineers.

Any training beyond that covered in the GTDR provisions, but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technical data license, may not be undertaken while the validated license is suspended or revoked.

Question L: We have contracted with our customer to provide a "customized" service for a fee (*i.e.*, write a program or an instruction manual for a specific customer requirement), and this was described in detail in our equipment export application. When we received our equipment export license under which we completed shipment and installation, we assumed that this work could commence, being directly related to the equipment and identified by us as necessary for the operation of that equipment for the specific customer.

Can we continue this work, which is already started, or is this impacted by the suspension of our equipment license?

Answer: In the case you have outlined, a separate validated license is required to cover technical data involved in such "specialized, custom service", unless the equipment validated license clearly specifies on its face that it covers the technical data. In any event, if all validated licenses are suspended to your customer's country the work must cease as it cannot be carried out under general license.

Question M: In most cases, we ship parts under validated licenses. However, the Regulations do provide for parts shipments for warranty repair situations under the GLR provisions of § 771.17.

If our validated licenses are suspended or revoked, is it permissible to change our previous license procedure and to ship parts on a one-for-one replacement basis where the equipment and parts are under manufacturer's warranty?

Answer: It is permissible to use any general license (G-Dest, GLR, etc) that may apply to a given shipment.

Question N: We have shipped equipment to our customer prior to suspension or revocation of our validated licenses, and have scheduled some management consultations with the customer relating to installation and operational planning, organization, and scheduling of the utilization of the exported equipment. The consultations may include meetings with the customer's management, discussion of specific problems, provision of generally available brochures or basic technical manuals, conducting introductory level training for the operations and support staff, etc.

These consultations, meetings, seminars, training sessions, and manuals are provided consistent with our standard business practices at no additional charge to customers and are for the purpose of advising all customers of the basic management and organizational techniques involved in utilization of the equipment.

We have previously considered the level of technical data involved as generally available GTDA or GTDR, without drawing much precise distinction. Do we need a validated license?

Answer: Generally available published technical data may be provided under GTDA. Also, the provision of manuals and instructions beyond the definition of GTDA is permissible under GTDR, provided that such manuals and instructions are directly required for the installation, assembly, maintenance, repair, or operation of the exported equipment. A seminar, training course, or consultation with the customer based on and restricted to the contents of such GTDA or GTDR manuals, instructions, and materials would be governed by the provisions of those general licenses.

Also, it is recognized that dialogue with the customer involves transfer of technical data, often of a general nature. In such consultations or dialogues (in the context of training sessions, seminars, and working meetings), it is necessary to limit the content of these exchanges to identifiable published material (GTDA), or the manuals and instructions provided together with the equipment under GTDR.

Guidance from OEL should be obtained whenever you are in doubt. Where it is determined necessary by OEL, technical data license applications should be filed for situations where technical data exchange may exceed that clearly within the restrictions of GTDR.

Question O: We have shipped computer equipment prior to the suspension or revocation of our validated licenses, but have not yet delivered the basic computer control programs (systems control software) required for the operation of the equipment.

Can we ship these programs, and assist the customer in getting it properly installed and operational?

Answer: Computer software that is not generally available as defined in General License GTDA requires a validated license for export, and thus may not be shipped in these circumstances. However, computer software that is both essential for operation of the system and specific to the application for which the system was licensed may be exported under the provisions of GTDR. This would include also the manuals or instructions necessary for the installation of such software. Assistance by your personnel in installation or use of GTDA or GTDR software is limited to the utilization of the materials provided to the customer and within the standard specifications of the software provided.

Additional training or instruction beyond the standard provisions would be subject to validated license.

Updates (error correction or software warranty services) to the original installed software are permissible under GTDR, provided that there is no enhancement of performance.

[Amdt. 30, 37 FR 1466, Jan. 29, 1972, and 45 FR 20074, Mar. 27, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 2—TECHNICAL DATA

COMMODITIES SUBJECT TO REPUBLIC OF SOUTH AFRICA EMBARGO POLICY

(SEE §§ 779.4(e) AND 785.4(a))

(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than the following: (a) 0.0008 mm TIR (peak-to-peak) for lathes and turning machines; or (b) D × 2×10^{-5} mm TIR (peak-to-peak) where D is the spindle diameter in millimeters for milling machines, boring mills, jig grinders, and machining centers (ECCN 1093);

(2) Equipment for the production of military explosives and solid propellants, as follows:

(a) Complete installations; and

(b) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and market propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants) (ECCN 2118);

(3) Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war (ECCN 2018), ammunition hand-loading equipment for both cartridges and shotgun shells, and equipment specially designed for manufacturing shotgun shells (ECCN 5399).

(4) Construction equipment built to military specifications, specially designed for airborne transport (ECCN 2317);

(5) Vehicles specially designed for military purposes, as follows:

(a) Military mobile repair shops specifically designed to service military equipment;

(b) All other specially designed military vehicles, excluding vehicles listed in Supplement No. 2 to Part 770;

(c) Pneumatic type casings (excluding tractor and farm implement types), of a kind specially constructed to be bullet-proof or to run when deflated;

(d) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use; and

(e) Specially designed components and parts to the foregoing (ECCN 2406);

(6) Pressure refuellers, pressure refuelling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and components, n.e.s. (ECCN 2410);

(7) Specifically designed components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (ECCN 2603);

(8) Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), except arms designed solely for signal, flare, or saluting use; and parts, n.e.s. (ECCN 5998);

(9) Shotgun shells, and parts (ECCN 6998);

(10) Military parachutes (ECCN 2410A);

(11) Submarine and torpedo nets (ECCN 2409A); and

(12) Bayonets and muzzle-loading (black powder) firearms (ECCN 2901A).

[43 FR 7313, Feb. 22, 1978, as amended at 48 FR 2119, Jan. 18, 1983; 49 FR 18470, May 1, 1984; 50 FR 3743, Jan. 28, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988; 55 FR

13123, Apr. 9, 1990; 55 FR 33897, Aug. 20, 1990]

SUPPLEMENT NO. 3—COMPUTER SOFTWARE

Software described in this supplement is subject to the written assurance requirements of § 779.4(f)(1)(i)(*a*) and requires an individual validated license for export to Country Groups QSWYZ, the People's Republic of China, and Afghanistan. Also see § 779.4(e) for written assurance and validated license requirements for exports to South Africa and Namibia.

TECHNICAL NOTES

1. "Software" is defined as follows:

"Software"—A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Program"—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Microprogram"—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

2. "Software" is categorized as follows (there is a close relationship and possible overlap among these categories):

"Development system"—"Software" to develop or produce "software". This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programmer productivity aids.

"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Diagnostic system"—

"Software" to isolate or direct "software" or equipment malfunctions.

"Maintenance system"—

"Software" to:

(a) Modify "software" or its associated documentation in order to correct faults, or for other updating purposes; or

(b) "Maintain" equipment;

"Operating system"—

"Software" to control:

(a) The operation of a "digital computer" or of "related equipment"; or

(b) The loading or execution of "programs".

"Application software"—

"Software" not falling within any of the definitions of the other categories of "software".

3. "Specially designed software" is defined as:

The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software"; or

(b) Addition of "programs".

(For a complete list of definitions of terms used in this Supplement, see Advisory Note 12 below; see also ECCN 1565 for additional definitions relating to electronic computers.)

List of Software Subject To This Supplement to Part 779:

(a) "Software" of whatever category, as follows:

(1) "Software" designed or modified for any computer that is part of a computer series designed and produced within Country Groups Q, W, Y, or Z, the Peoples's Republic of China, or Afghanistan;

except "application software" designed for and limited to:

(i) Accounting, general ledger, inventory control, payroll, accounts receivable, personnel records, wages calculation or invoice control;

(ii) Data and text manipulation such as sort/merge, text editing, data entry or word processing;

(iii) Data retrieval from established data files for purposes of report generation or inquiry for the functions described in (i) or (ii) above; or

(iv) The non "real time processing" of pollution sensor data at fixed sites or in civil vehicles for civil environmental monitoring purposes;

(2) "Software" designed or modified for the design, development or production of items controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(3) "Software" designed or modified for:

(i) Controlled "hybrid computers";

(ii) One or more of the functions described in ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M) or for "digital computers" or "related equipment" designed or modified for such functions;

NOTE: This paragraph (a)(3)(ii) does not control:

(a) "Specially designed software" in machine executable form for "digital computers" and "related equipment" therefor that are excluded from control only by Notes 1 or 2 of the heading to ECCN 1565A(h);

(b) "Software" for equipment described by ECCN 1565 (h)(1)(i)(C) or (h)(1)(i)(M), unless the software performs:

(1) "Multi-data-stream processing" or load sharing functions; *or*

(2) Datagram or "fast select" functions as defined in level III of CCITT X.25 or equivalent.

(4) "Software" for computer-aided design, manufacture, inspection or test of items controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(5) "Software" designed or modified to provide certifiable multi-level security or certifiable user isolation applicable to government classified material or to applications requiring an equivalent level of security, or "software" to certify such "software"[1];

(6) "Software" specially designed for computer aided design (CAD) of patterned printed circuit board "substrates" that is designed for any of the following:

(i) Automatically transforming schematic functional descriptions into pattern layouts;

(ii) Simulation of the performance of the circuit layout;

(iii) Automatic generation of test string lists (i.e., test vectors) for "substrates" having more than two layers (including the ground plane) of interconnections;

NOTE: This paragraph (a)(6)(iii) does not control automatic generation of test string lists for continuity testing of "substrates".

(iv) Automatic placement or routing that is designed for performing impedance matching or crosstalk analysis and crosstalk matching;

(7) "Software" specially designed for the computer aided design of semiconductor devices or integrated circuits having any of the following characteristics:

(i) Automatic transformation of schematic diagrams, functional block descriptions or logic diagrams into physical layouts;

(ii) Circuit verification rules;

(iii) Automatic routing for physical layout;

(iv) Automatic placement for physical layout;

(v) Automatic generation of test vectors; *or*

(vi) Simulation of the physically laid out circuits;

(b) Categorized "software", as follows:

(1) "Development systems":

(i) "Development systems" employing "high-level language" and designed for or containing "programs" or "databases" special to the development or production of:

(A) "Specially designed software" controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(B) "Software" controlled by sub-paragraphs (a)(2) or (a)(3) of this supplement, including any subset designed or modified for use as part of such a "development system";

(ii) "Development systems" employing "high-level language" and designed for or containing the "software" tools and "databases" for, the development or production of "software", or any subset designed or modified for use as part of a "development system" such as or equivalent to:

(A) Ada Programming Support Environment (APSE);

(B) Any subset of APSE, as follows:

(1) Kernel APSE;

(2) Minimal APSE;

(3) Ada compilers specially designed as an integrated subset of APSE; or

(4) Any other subset of APSE;

(C) Any superset of APSE; or

(D) Any derivative of APSE;

(2) "Programming systems":

(i) "Cross-hosted" compilers and "cross-hosted" assemblers;

NOTE: For "cross-hosted" compilers or "cross-hosted" assemblers that have to be used in conjunction with microprocessor or microcomputer development instruments or systems described in ECCN 1529A, see that ECCN.

(ii) Compilers or interpreters designed or modified for use as part of a "development system" controlled by sub-paragraph (b)(1) above;

(iii) Disassemblers, decompilers or other "software" that convert "programs" in object or assembly language into a higher level language, except simple debugging "application software", such as mapping, tracing, checkpoint/restart, breakpoint, dumping and the display of the storage contents or their assembly language equivalent;

(3) "Diagnostic systems" or "maintenance systems" designed or modified for use as part of a "development system" controlled by sub-paragraph (b)(i) above;

(4) "Operating systems":

(i) "Operating systems" designed or modified for "digital computers" or "related equipment" exceeding the performance limits in paragraphs (b) (1) and (b) (2) of Advisory Note 12 for ECCN 1565A;

(ii) "Operating systems" providing online transaction data processing that permit integrated teleprocessing and "on-line updating" of "databases";

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[1] Department of Defense certifiable under section (b)(3) of "Department of Defense Trusted Computer System Evaluation Criteria", published in DOD Computer Security Center, Fort Meade, MD 20755.

(5) "Application software";

(i) "Software" for cryptologic or cryptanalytic applications;

(ii) Artificial intelligence "software", including "software" normally classified as expert systems, that enables a "digital computer" to perform functions normally associated with human perception and reasoning or learning;

(iii) "Database management systems" designed to handle "distributed databases" for

(A) Fault tolerance by using techniques such as maintenance of duplicated "databases"; or

(B) Integrating data at a single site from independent remote "databases";

(iv) "Software" designed to adapt "software" resident on one "digital computer" for use on another "digital computer", except "software" to adapt between two legally exported digital computers.

(v) "Software" to provide "adaptive control" with both of the following characteristics:

(A) For "flexible manufacturing units" (FMUs) that consist at least of equipment described in paragraphs (b) (1) and (b) (2) of the definition for "flexible manufacturing unit" that is listed under the heading "Definitions of Terms" at the end of this Supplement; *and*

(B) Capable of generating or modifying, in "real time processing", "programs", or data by using the signals obtained simultaneously by means of at least two detection techniques, such as:

(*1*) Machine vision (optical ranging);

(*2*) Infrared imaging;

(*3*) Acoustical imaging (acoustical ranging);

(*4*) Tactile measurement;

(*5*) Inertial positioning;

(*6*) Force measurement;

(*7*) Torque measurement;

NOTE: This paragraph (b) (5) (v) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using pre-stored part "programs" and a prestored strategy for the distribution of the part "programs".

(c) "Specially designed software" for equipment, as follows;

(1) Manufacturing and testing equipment (for optical fiber, optical cable and other cables) controlled under ECCN 1353A;

(2) Equipment controlled under ECCN 1417A;

(3) Equipment controlled under ECCN 1501A;

(4) Equipment controlled under ECCN 1502A;

(5) Equipment controlled under ECCN 1510A;

(6) Equipment controlled under ECCN 1516A;

(7) Equipment controlled under ECCN 1519A;

(8) Equipment controlled under ECCN 1520A(b);

(9) Equipment controlled under ECCN 1529A;

(10) Equipment controlled under ECCN 1533A;

(11) Equipment controlled under ECCN 1567A;

(d) "Specially designed software" for the following:

(1) Technical data described in Supplement No. 4 to Part 779 for metal-working manufacturing processes;

(2) Equipment, tooling and fixtures controlled under ECCN 1080A for the manufacturing or measuring of gas turbine blades or vanes;

(3) Equipment, tools, dies, molds and fixtures controlled under ECCN 1081A for the manufacture or inspection of aircraft, airframe structures, or aircraft fasteners;

(4) Equipment, tools, dies, molds, fixtures and gauges controlled under ECCN 1088A for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines;

(5) Isostatic presses controlled under ECCN 1312A;

(6) Equipment controlled under ECCN 1357A for the production of fibers controlled by ECCN 1763A, or their composites;

(7) Equipment controlled under ECCN 1358A for the manufacture or testing of devices and assemblies controlled under ECCN 1572A;

(8) Test facilities and equipment controlled under ECCN 1361A for the design or development of aircraft or gas turbine aero-engines;

(9) Water tunnel equipment controlled under ECCN 1363A, including software that contains databases generated by the use of equipment controlled under that ECCN;

(10) Machine tools controlled under ECCN 1370A for generating optical quality surfaces;

(11) Design and production of aircraft and helicopter airframes and propulsion systems controlled under ECCN 1460A;

(12) Integration software for integrated flight instrument systems, automatic pilots, inertial or other equipment using accelerometers or gyros controlled under ECCN 1485A;

(13) Marine or terrestrial acoustic or ultrasonic systems or equipment controlled under ECCN 1510A; and

(14) Precision linear and angular measuring systems controlled under ECCN 1099A.

NOTE 1: Paragraphs (a) and (b) of this Supplement No. 3 to Part 779 do not control "software" not exceeding 5,000 statements in "source language", excluding data, provided that:

(a) The "software" is neither designed nor modified for use as a module of a larger "software" module or system that in total exceeds this limit; *and*

(b) The "software" is not controlled by sub-paragraph (b)(5) of this Supplement.

Note 2: Paragraphs (a) and (b) of this Supplement No. 3 to Part 779 do not control "software" initially exported to a proscribed destination prior to January 1, 1984, provided that:

(a) The "software" is identical to and in the same language form (source or object) as initially exported, allowing minor updates for the correction of errors that do not modify the initially exported functions;

(b) The accompanying documentation does not exceed the level of the initial export; *and*

(c) The "software" is exported to the same proscribed destination as the initial export.

Advisory Note 3: [Reserved]

Advisory Note 4: [Reserved]

Advisory Note 5: No written assurance is required for exports under General License GTDR, and no individual validated license is needed to export to Country Groups TVQWY, for "software" that is "standard commercially available" "software", provided *all* of the following conditions are met:

(a) The software is designed for installation by the user without further support by the supplier;

(b) The software is designed for use on "digital computers" and "related equipment" therefore that do not exceed the performance limits described in ECCN 1565A(h) (2) (iii).

Note: This paragraph (b) permits exports of "standard commcerically availalbe" "software" designed for "digital computers" or "related equipment":

(1) Not exceeding the performance limits described in ECCN 1565A(h)(2)(iii), as modified by this paragraph, even when the "software" can be used on "digital computers" or "related equipment" exceeding these limits; or

(2) Belonging to a series containing models exceeding the performance limits described in ECCN 1565A(h)(2)(iii), provided that the "software" can be used on "digital computers" or "rrelated equipment" in series that do not exceed these limits.

(c) The software is generally available to the public through retail selling points, other than those specialized in selling electronic computers to the general public in model series exceeding the limits in paragraph (b) above.

Note: A retail selling point is defined as a facility selling from stock by means of:

(1) Over-the-counter transactions;

(2) Mail order transactions;

(3) Telephone call transactions.

Advisory Note 6: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "application software" contolled by sub-paragraph (a)(1) above, but not otherwise listed in this Supplement or ECCNs on the Commodity Control List identified by the code letter "A", provided that:

(a) The "application software" is designed for and limited to the following:

(1) The approved end-use of legally exported equipment or systems in conjunction with any computer that is part of a computer series produced within a controlled area and based on a design originating in a COCOM country; *or*

(2) The monitoring and control of industrial processes limited to the production of items not described by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810; and

(b) No restricted technical data is provided.

Advisory Note 7: [Reserved]

Advisory Note 8: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of normal commercial "software" for civil Air Traffic Control (ATC) systems approved for export, provided that:

(a) The "software" is commonly used by civil Air Traffic Control authorities outside controlled areas, but not precluding the personalization of certain parameters for civil Air Traffic Control authorities wherever located:

(b) The "software" is not designed or modified for any "digital computer" that is part of a "digital computer" series designed and produced within a controlled area;

(c) The "software" is the minimum necessary to accomplish the normal civil Air Traffic Control functions outside controlled areas;

(d) The "software" will not contain or be capable of accomplishing any of the following functions:

(1) Electronic Counter Counter Measures (ECCM);

(2) Weapon display, allocation or operation;

(3) Intercept guiding capability; or

(4) Interfacing with altitude determining radars, except secondary search radars;

(e) The "software" is further limited by the amount of "source code", which is to be the minimum necessary for the use (*i.e.*, installation, operation and maintenance) of the "software";

(f) In addition to the above limitations, the only other system "software" allowed is the minimum "programming system" for the maintenance of the "software".

(g) A signed statement of the end-user or importing agency containing a full description of the "software" and its characteristics vis-a-vis the sub-paragraphs above, its intended application and workload and a complete identification of all end-users and their activities is provided;

(h) The "software" will not be used to provide or process data associated with military control centers or military radars or otherwise be associated with such radars or centers; and

(i) The type and characteristics of the "software" are reasonable for the specific civil Air Traffic Control applications.

ADVISORY NOTE 9: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "operating systems" controlled only by sub-paragraph (b)(4)(ii) above when supplied with "digital computers" and "related equipment" exported under the provision of ECCN 1565A, Advisory Notes 9 and 12, provided that these "operating systems" are:

(a) For use with a "digital computer" exported under the provisions of ECCN 1565A;

(b) In machine executable version;

(c) Limited to the minimum "standard commercially available" "software"; and

(d) Not designed or modified for "database management systems" controlled by sub-paragraph (b)(5)(iii) above.

ADVISORY NOTE 10: Licenses are likely to be approved for export to satsifactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "software" controlled by sub-paragraph (a)(3)(ii) above for "digital computers" and "related equipment" exported under the provisions of ECCN 1565A, Advisory Note 9, provided that:

(a) The "software" is limited to:

(1) The minimum necessary for the approved application;

(2) Machine executable form; and

(3) "Specially designed software" for equipment approved for export under ECCN 1565A, Advisory Note 9, for one or more of the functions described in ECCN 1565A (h) (1) (i) (A), (h) (1) (i) (B), or (h) (1) (i) (C);

(b) The "specially designed software" for "signal processing" and "image enhancement" does not provide for more than one of the following:

(1) Time compression; or

(2) Transformations between domains (e.g. Fast Fourier Transform or Walsh Transform).

ADVISORY NOTE 11: Licenses will receive favorable consideration; and for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "software" controlled by sub-paragraph (a)(3)(ii) above for "digital computers" and "related equipment" exported under the provisions of ECCN 1565A, Advisory Note 12, provided that the "software" is limited to

(a) "Software" for one or more of the functions described in ECCN 1565A(h)(1)(i)(A), (B), or (C);

(b) The minimum necessary for the approved applications; and

(c) Machine executable form.

ADVISORY NOTE 12: Licenses are likely to be approved to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC), and Afghanistan of "software" controlled by paragraph (b)(5)(v) provided that all of the following conditions are met:

(a) The "software" is limited to machine executable form;

(b) The end-user does not belong to any of the following industrial sectors:

(1) Nuclear industry;

(2) Aerospace industry;

(3) Shipbuilding;

(4) Heavy vehicles manufacturing;

(5) Machine building; *or*

(6) Electronics, including microelectronics industry; *and*

(c) The "flexible manufacturing unit" for which the "software" is specially designed does not contain more than seven pieces of equipment enumerated in paragraph (b) of the definition for "flexible manufacturing unit" in the Definitions of Terms at the end of this Supplement.

ADVISORY NOTE 13 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "software" controlled for export in this Supplement No. 3 to Part 779, as follows:

(a) "Software" controlled only by sub-paragraph (a)(1) (of the "List of Software Subject to this Supplement to Part 779") for computers designed and produced within the People's Republic of China;

(b) "Software" controlled by sub-paragraph (a)(3)(ii) for equipment that is covered by an Advisory Note to ECCN 1565A in the Commodity Control List;

(c) "Software" not specially designed for computer-aided design, manufacture, inspection or testing of products controlled for export on the Commodity Control List;

(d) "Cross-hosted" compilers or "cross-hosted" assemblers controlled by sub-paragraph (b)(2)(i);

(e) "Software" controlled by sub-paragraphs (b)(2)(ii) or (b)(3) for microprocessor or microcomputer development systems that are covered by an Advisory Note on the Commodity Control List;

(f) "Operating systems" controlled by subparagraph (b)(4) for computers that are covered by an Advisory Note to ECCN 1565A on the Commodity Control List.

Definitions of Terms:

"Adaptive control"—

A control system that adjusts the response from conditions detected during the operation (Ref. ISO 2806-1980).

"Analog computer"—

Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; and

(c) Provide output of data.

"Application software"—

"Software" not falling within any of the definitions of the other categories of "software".

"Cross-hosted"—

For "programming systems", those that produce "programs" for a model of electronic computer different from that used to run the "programming system", *i.e.*, they have code generators for equipment different from the host computer.

"Database"—

A collection of data, defined for one or more particular applications, physically located and maintained in one or more electronic computers or "related equipment".

"Database management system"—

"Applications software" to manage and maintain a "database" in one or more prescribed logical structures for use by other "application software" independent of the specific methods used to store or retrieve the "database".

"Data device"—

Equipment capable of transmitting or receiving sequences of digital information.

"Development system"—

"Software" to develop or produce "software". This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programmer productivity aids.

"Diagnostic system"—

"Software" to isolate or detect "software" or equipment malfunctions.

"Digital computer"—

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; and

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"Distributed database"—A "database" physically located and maintained in part or as a whole in two or more interconnected electronic computers or "related equipment", such that inquiries from one location can involve "database" access in other interconnected electronic computers or "related equipment".

"Firmware"—see "microprogram".

"Flexible manufacturing unit" (sometimes also referred to as 'flexible manufacturing system' (FMS) or 'flexible manufacturing cell' (FMC))—

An entity that includes a combination of at least:

(a) A "digital computer" including its own "main storage" and its own "related equipment"; *and*

(b) Two or more of the following:

(1) A machine tool described in ECCN 1091A(b);

(2) A dimensional inspection machine described in ECCN 1099A(b), or another digitally controlled measuring machine controlled by ECCN 1099A(c);

(3) A "robot" controlled by ECCN 1391A;

(4) Digitally controlled equipment controlled by ECCNs 1080A, 1081A, 1086A, or 1088A;

(5) "Stored program controlled" equipment controlled by ECCN 1355A(b);

(6) Digitally controlled equipment controlled by ECCN 1357A;

(7) Digitally controlled electronic equipment controlled by ECCN 1529A.

"High-level language"— A programming language that does not reflect the structure of any one given electronic computer or that of any one given class of electronic computers.

"Hybrid computer"—Equipment that can:

(a) Access data;

(b) Process data, in both analog and digital representations; and

(c) Provide output of data.

"Maintenance system"—"Software" to:

(a) Modify "software" or its associated documentation in order to correct faults, or for other updating purposes; or

(b) Maintain equipment.

"Microprogram"—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Object code" or "object language"—See "programming system".

"On-line updating"—Processing in which the contents of a "database" can be amended within a period of time useful to interact with an external request.

"Operating system"—"Software" to control:

(a) The operation of a "digital computer" or of "related equipment"; or

(b) The loading or execution of "programs".

"Program"—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Programming system"—"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Related equipment"—Equipment 'embedded' in, 'incorporated' in, or 'associated' with electronic computers, as follows:

(a) Equipment for interconnecting "analog computers" with "digital computers";

(b) Equipment for interconnecting "digital computers";

(c) Equipment interfacing electronic computers to "local area networks" or to "wide area networks";

(d) Communication control units;

(e) Other input/output (I/O) control units;

(f) Recording or reproducing equipment referred to ECCN 1565A by ECCN 1572A;

(g) Displays; or

(h) Other peripheral equipment.

NOTE: "Related equipment" containing an "embedded" or "incorporated" electronic computer, but lacking "user accessible programmability", does not thereby fall within the definition of an electronic computer.

"Self-hosted"—For "programming systems", those producing "programs" for the same model of electronic computer as that used to run the "programming system", *i.e.*, they only have code generators for the host computer.

"Software"—A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Source code" or "source language"—See "programming system".

"Specially designed software"—The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software" or

(b) Addition of "programs".

"Standard commercially available"—For "Software" that is

(a) Commonly supplied to general purchasers or users of equipment outside controlled areas, but not precluding the personalization of certain parameters for individual customers wherever located;

(b) Designed and produced for civil applications;

(c) Not designed or modified for any "digital computer" that is part of a "digital computer" series designed and produced within a controlled area; and

(d) Supplied in a commonly distributed form.

"Substrate"—

A sheet of base material with or without an interconnection pattern and on which or within which "discrete components" or integrated circuits or both can be located.

[50 FR 16470, Apr. 26, 1985, as amended at 50 FR 37115 and 37137, Sept. 11, 1985; 50 FR 52902, Dec. 27, 1985; 52 FR 2106, Jan. [illegible], 1987; 52 FR 27506, July 21, 1987; 52 FR 29177, Aug. 6, 1987; 53 FR 36440, Sept. [illegible], 1988. Redesignated at 53 FR 37751, Sept. [illegible], 1988 and amended at 53 FR 44855, Nov. [illegible], 1988; 54 FR 8291, Feb. 28, 1989; 54 FR 18490, May 1, 1989; 54 FR 41057, Oct. [illegible], 1989; 55 FR 26657, June 29, 1990; 55 FR 35829, Aug. 31, 1990; 55 FR 35839, Aug. [illegible], 1990]

SUPPLEMENT NO. 4—ADDITIONAL SPECIFICATIONS FOR CERTAIN TECHNICAL DATA REQUIRING A VALIDATED LICENSE TO ALL DESTINATIONS EXCEPT CANADA

(1) Technical data for metal-working manufacturing processes and specially designed software therefor (§ 779.4(d)(16)):

(i) The following are definitions of terms used in section (1) of this Supplement:

(A) "Hot die forging" is a deformation process where die temperatures are at the same nominal temperature as the workpiece and exceed 850 K (577 °C, 1,070 °F);

(B) "Superplastic forming" is a deformation process using heat for metals that are normally characterized by low values of elongation (less that 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values;

(C) "Diffusion bonding" is a solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material;

(D) "Superalloys" are nickel, cobalt, or iron-based alloys with strengths superior to the AISI 300 series (as of May 1, 1982) at temperatures over 922 K (649 °C) under severe environmental and operating conditions. Excluded are carbon steels, low-alloy steels and stainless steels with strengths inferior to the AISI 300 series (as of May 1, 1982).

(E) "Direct-acting hydraulic pressing" is a deformation process that uses a fluid-filled flexible bladder in direct contact with the workpiece;

(F) "Hot isostatic densification" is a process of pressurizing a casting at temperatures exceeding 375 K (102 °C, 215.6 °F) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting;

(G) "Vacuum hot pressing" is a process that uses a press with heated dies to consolidate metal powder under reduced atmospheric pressure into a part;

(H) "High pressure extrusion" is a process yielding a single-pass reduction ratio of 4 to 1 or greater in a cross sectional area of the resulting part;

(I) "Isostatic pressing" is a process that uses a pressurizing medium (gas, liquid, solid particles, etc.) in a closed cavity to create equal force in all directions upon a metal powder-filled container for consolidating the powder into a part.

(ii) Technical data covered by paragraph (d)(16) of § 779.4 is as follows:

(A) Technical data for the design of tools, dies and fixtures specially designed for the following processes:

(1) "Hot die forging";

(2) "Superplastic forming";

(3) "Diffusion bonding";

(4) "Direct-acting hydraulic pressing";

(B) Technical data consisting of process parameters as listed below used to control:

(1) "Hot die forging":

(i) Temperature;

(ii) Strain rate;

(2) "Superplastic forming" of aluminum alloys, titanium alloys and 'superalloys':

(i) Surface preparation;

(ii) Strain rate;

(iii) Temperature;

(iv) Pressure;

(3) "Diffusion bonding" of 'superalloys' and titanium alloys:

(i) Surface preparation;

(ii) Temperature;

(iii) Pressure;

(4) "Direct-acting hydraulic pressing" of aluminum alloys and titanium alloys:

(i) Pressure;

(ii) Cycle time;

(5) "Hot isostatic densification" of titanium alloys, aluminum alloys and 'superalloys':

(i) Temperature;

(ii) Pressure;

(iii) Cycle time.

(2) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (§ 779.4(d)(17)):

(a) "Software" with all the following characteristics:

(1) Specially designed for "automatically controlled industrial systems" that include at least eight pieces of the equipment enumerated in Technical Note (b)(1) to (9) below;

NOTES: 1. The "digital computers" of the "automatically controlled industrial system" do not share a common "main storage" but exchange information by transmitting messages through a "local area network".

2. This sub-paragraph (a)(1) does not release from export control "software" in source code.

(2) Integrating, in a hierarchical manner, while having access to data that may be stored outside the supervisory "digital computer", the manufacturing processes with:

(i) Design functions; *or*

(ii) Planning and scheduling functions; *and*

(3)(i) Automatically generating and verifying the manufacturing data and instructions, including selection of equipment and sequences of manufacturing operations, for the manufacturing process from design and manufacturing data; *or*

(ii) Automatically reconfiguring the "automatically controlled industrial system" through reselecting equipment and sequences of manufacturing operation by "real-time processing" of data pertaining to anticipated but unscheduled events; *and*

NOTE: This sub-paragraph (3)(ii) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using prestored "part" programs and a prestored strategy for the distribution of the "part" programs.

(b) Technical data for the design of "automatically controlled industrial systems" that will be used with the "software" controlled for export by sub-paragraph (a) above, regardless of whether the conditions of sub-paragraph (a)(1) are met.

TECHNICAL NOTE: For the purposes of paragraph (d)(17) of § 779.4:

(a) An "automatically controlled industrial system" is a combination of:

(1) One or more "flexible manufacturing units"; *and*

(2) A supervisory "digital computer" for coordination of the independent sequences of computers instructions to, from, and within the "flexible manufacturing units";

(b) A "flexible manufacturing unit" is an entity that comprises a combination of a "digital computer" including its own "main storage" and its own "related equipment", and at least one of the following:

(1) A machine tool or a dimensional inspection machine covered by ECCNs 1091A or 1370A;

(2) A "robot" covered by ECCN 1391A;

(3) Digitally controlled equipment covered by ECCNs 1080A, 1081A, 1086A or 1088A;

(4) Digitally controlled equipment covered by paragraph (b) of ECCN 1355A;

(5) Digitally controlled equipment covered by ECCN 1357A;

(6) Digitally controlled electronic equipment covered by ECCN 1529A; *or*

(7) A digitally controlled measuring system covered by ECCN 1532A.

NOTE: For the definitions of other terms in quotation marks, see ECCNs 1391A or 1565A or Supplement No. 3 to Part 779.

NOTE: Sub-paragraph (a) above does not control "software" (in "machine executable form" only) for industrial sectors other than nuclear, aerospace, shipbuilding, heavy vehicles, machine building, microelectronics and electronics. This NOTE does not relea from export control design technology spe ified in sub-paragraph (b) above.

(3) Technical data for application to no electrical devices to achieve:

(i) Inorganic overlay coatings or inorgan surface modification coatings,

(A) Specified in column 3 of the Tab below,

(B) On substrates specified in column 2 o the Table below,

(C) By processes as defined in Technica Note (a) to (h) and specified in column 1 o the Table below, and specially designed so ware therefor (§ 779.4(d)(19)):

TABLE

[This Table should be read to control the technology of a particular coating process only when the resultant coating in col 3 is in a paragraph directly across from the relevant substrate under column 2. For example, chemical vapor deposi coating process technical data *are controlled* for the application of noble metal modified aluminides to superalloy substra but are *not controlled* for the application of noble metal modified aluminides to titanium alloys. In the second case th resultant coating is *not* listed in the paragraph under column 3 directly across from the paragraph under column 2 lis "Titanium alloys".]

1. Coating process [1]	2. Substrate	3. Resultant coating
A. "Chemical Vapor Deposition" (CVD).	Superalloys	Aluminides for internal surfaces, Alloyed aluminides,[2] or No metal modified aluminides.[3]
	Titanium or Titanium alloys.	Carbides, Aluminides, or Alloyed aluminides.[2]
	Ceramics	Silicides or Carbides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Copper or Copper alloys.	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, Mixtures thereof,[4] or Dielectric layers.
B. "Electron-Beam Physical Vapor Deposition" (EB-PVD).	Superalloys	Alloyed silicides, Alloyed aluminides,[2] MCrAlX (*except* CoCr containing less than 22 weight percent of chromium and le than 12 weight percent of aluminum and less than 2 wei percent of yttrium),[5] Modified zirconia (*except* calcia-stabiliz zirconia), or Mixtures thereof (including mixtures of the above w silicides or aluminides) .[4]
	Ceramics	Silicides or modified zirconia (*except* calcia-stabilized zirco
B. "Electron-Beam Physical Vapor Deposition" (EB-PVD).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent chromium and less than 12 weight percent of aluminum and le than 2 weight percent of yttrium),[5] Modified zirconia (exc calcia-stabilized zirconia) or mixtures thereof.[4]
	Corrosion resistant steel [7].	MCrAlX (*except* CoCrAlY containing less than 22 weight percent chromium and less than 12 weight percent of aluminum and le than 2 weight percent of yttrium)[5] or Modified zirconia (exc calcia-stabilized zirconia).
B. "Electron-Beam Physical Vapor Deposition" (EB-PVD).	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Copper or Copper alloys.	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, Mixtures thereof,[4] or Dielectric layers.
C. "Electrophoretic deposition"	Superalloys	Alloyed aluminides [2] or Noble metal modified aluminides.[3]
D. "Pack cementation" (see also A above)[8].	Superalloys	Alloyed aluminides [2] or Noble metal modified aluminides.[3]
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, or Mixtures thereof.[4]
	Aluminum alloys [6]	Aluminides or alloyed aluminides.[2]

TABLE—Continued

[The Table should be read to control the technology of a particular coating process only when the resultant coating in column 3 is in a paragraph directly across from the relevant substrate under column 2. For example, chemical vapor deposition coating process technical data *are controlled* for the application of noble metal modified aluminides to superalloy substrates, but are *not controlled* for the application of noble metal modified aluminides to titanium alloys. In the second case, the resultant coating is *not* listed in the paragraph under column 3 directly across from the paragraph under column 2 listing "Titanium alloys".]

1. Coating process [1]	2. Substrate	3. Resultant coating
E. "Plasma spraying" (high velocity or low pressure only).	Superalloys	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
E. "Plasma spraying" (high velocity or low pressure only).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), Silicides, or Mixtures thereof.[4]
	Corrosion resistant steel [7].	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
E. "Plasma spraying" (high velocity or low pressure only).	Titanium or Titanium alloys.	Carbides or Oxides.
F. "Slurry deposition"	Refractory metals [8]	Fused silicides or Fused aluminides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, or Mixtures thereof.[4]
G. "Sputtering" (high rate, reactive, or radio frequency only).	Superalloys	Alloyed silicides, Alloyed aluminides [3], Noble metal modified aluminides [3], MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), Platinum, or Mixtures thereof (including mixtures of the above with silicides or aluminides).[4]
	Ceramics	Silicides, Platinum, or Mixtures thereof.[4]
G. "Sputtering" (high rate, reactive, or radio frequency only).	Aluminum alloys [6]	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
	Corrosion resistant steel [7].	MCrAlX (*except* CoCrAlY containing less than 22 weight percent of chromium and less than 12 weight percent of aluminum and less than 2 weight percent of yttrium),[5] Modified zirconia (*except* calcia-stabilized zirconia), or Mixtures thereof.[4]
G. "Sputtering" (high rate, reactive, or radio frequency only).	Titanium or Titanium alloys.	Borides or Nitrides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Copper or Copper alloys.	Tungsten or Dielectric layers.
	Silicon carbide or Cemented tungsten carbide.	Carbides, Tungsten, or Dielectric layers.
H. "Ion implantation"	High temperature bearing steels.	Additions of chromium, tantalum, or niobium (columbium).
	Beryllium or Beryllium alloys.	Borides.
	Carbon-carbon, Carbon-ceramic, or Metal matrix composites.	Silicides, Carbides, Mixtures thereof,[4] or Dielectric layers.
	Titanium or Titanium alloys.	Borides or Nitrides.
	Silicon nitride or Cemented tungsten carbide.	Nitrides, Carbides, or Dielectric layers.

TABLE—Continued

[This Table should be read to control the technology of a particular coating process only when the resultant coating in column 3 is in a paragraph directly across from the relevant substrate under column 2. For example, chemical vapor deposition coating process technical data *are controlled* for the application of noble metal modified aluminides to superalloy substrates but are *not controlled* for the application of noble metal modified aluminides to titanium alloys. In the second case, the resultant coating is *not* listed in the paragraph under column 3 directly across from the paragraph under column 2 listing "Titanium alloys".]

1. Coating process [1]	2. Substrate	3. Resultant coating
H. "Ion implantation"	Sensor window materials transparent to electromagnetic waves, as follows: silica, alumina, silicon, germanium, zinc sulphide, zinc selenide, or gallium arsenide.	Dielectric layers.

Footnotes:

1 Coating process includes coating repair and refurbishing as well as original coating.

2 Multiple-stage coatings in which an element or elements are deposited prior to application of the aluminide coating, even if these elements are deposited by another coating process, are included in the term "alloyed aluminide" coating, but the multiple use of single-stage "pack cementation" processes to achieve alloyed aluminides is not included in the term "alloyed aluminide" coating.

3 Multiple-stage coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating are included in the term "noble metal modified aluminide" coating.

4 Mixtures consist of infiltrated material, graded compositions, co-deposits and multilayer deposits and are obtained by one or more of the coating processes specified in this Table.

5 MCrAlX refers to an alloy where M equals cobalt, iron, nickel or combinations thereof, and X equals hafnium, yttrium, silicon or other minor additions in various proportions and combinations.

6 Aluminum alloys as a substrate in this Table refers to alloys usable at temperatures above 500K (227°C).

7 Corrosion resistant steel refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8 Refractory metals as a substrate in this Table consist of the following metals and their alloys: niobium (columbium), molybdenum, tungsten, and tantalum.

9 This does not control technical data for single-stage "pack cementation" of solid airfoils.

TECHNICAL NOTE: The definitions of processes specified in column 1 of the Table are as follows:

(a) "Chemical Vapor Deposition" (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, composite, or ceramic is deposited upon a heated substrate. Gaseous reactants are reduced or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloyed, or compounded material on the substrate. Energy for this decomposition or chemical reaction process is provided by the heat of the substrate.

Note 1: CVD includes the following processes: out-of-"pack", pulsating, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted.

Note 2: "Pack" denotes a substrate immersed in a powder mixture.

Note 3: The gaseous material utilized in the out-of-"pack" process is produced using the same basic reactions and parameters as the "pack cementation" process, except that the substrate to be coated is not in contact with the powder mixture.

(b) "Electron-Beam Physical Vapor Deposition" (EB-PVD) is an overlay coating process conducted in a vacuum chamber, wherein an electron beam is directed onto the surface of a coating material causing vaporization of the material and resulting in condensation of the resultant vapors onto a substrate positioned appropriately.

Note: The addition of gases to the chamber during the processing is an ordinary modification to the process.

(c) "Electrophoretic deposition" is a surface modification coating or overlay coating process in which finely divided particles of a coating material suspended in a liquid dielectric medium migrate under the influence of an electrostatic field and are deposited on an electrically conducting substrate.

Note: Heat treatment of parts after coating materials have been deposited on the substrate, in order to obtain the desired coating, is an essential step in the process.

(d) "Pack cementation" is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture, a so-called "pack", that consists of:

(1) The metallic powders that are to be deposited (usually aluminum, chromium, silicon, or combinations thereof);

(2) An activator (normally a halide salt); and

(3) An inert powder, most frequently alumina.

The substrate and powder mixture is contained within a retort that is heated to tween 1030K to 1375K for sufficient time to deposit the coating.

(e) "Plasma spraying" is an overlay coating process wherein a gun (spray torch), which produces and controls a plasma, accepts powdered coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed.

Note 1: "High velocity" means more than 750 meters per second.

Note 2: "Low pressure" means less than ambient atmospheric pressure.

(f) "Slurry deposition" is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting; subsequently, air or oven dried; and heat treated to obtain the desired coating.

(g) "Sputtering" is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate.

Note: Triode, magnetron, or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications to the process.

(h) "Ion implantation" is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. The definition includes processes in which the source of the ions is a plasma surrounding the substrate and processes in which ion implantation is performed simultaneously with "electron beam physical vapor deposition" or "sputtering".

(4) Technical data and software for the development and production of commodities that are listed below in numerical order by their respective Export Control Commodity. The commodities and related design and production technical data are controlled for nuclear weapons delivery reasons (see § 776.18).

ECCN 2018A: Specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 776.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

ECCN 2118A: Production equipment for the development or production of rocket propellants.

ECCN 4118B: Batch mixers specially designed or modified for mixing solid propellants with a working capacity of 30 U.S. gallons (114 liters) or more, according to the manufacture's technical specifications, or a total (volumetric) capacity of 45 U.S. gallons (170 liters) or more, and specially designed components therefore.

ECCN 1131A: Pumps used in propulsion systems and related components as follows: Pumps (except vacuum pumps), having all flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 4302B: Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa. (Commodities described in this entire entry.)

ECCN 1357A: Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor. (Commodities described in this entire entry.)

ECCN 1361A: Commodities described in entire entry, except for paragraph (e) under the "List of Wind Tunnels Controlled by ECCN 1361A."

ECCN 1362A: Vibration test equipment. (Commodities described in this entire entry.)

ECCN 1385A: Specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A. (Commodities described in this entire entry.)

ECCN 1460A: Commodities described in paragraphs (c), and (d) as applicable to (c), under the "List of Nonmilitary Equipment Controlled by ECCN 1460A" for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient.

ECCN 1485A: Commodities described in this entire entry (Note: Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 799.2)).

ECCN 1501A: Commodities described in paragraphs (b) (2) through (5) and (c) under the "List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A" for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

ECCN 1516A: Commodities described in paragraph (b) under the "List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A" for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2. launch and ground support of the above systems.

ECCN 1517A: Commodities described in paragraph (c) under the "List of Radio Transmitters and Components Controlled by ECCN 1517A" for telemetering and and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2. launch and ground support of the above systems.

ECCN 4518B: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2. launch and ground support of the above systems.

ECCN 1529A: Commodities described in paragraphs (c) and (d) under the "List of Equipment Controlled by ECCN 1529A" for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter.

ECCN 4529B: Commodities described under the "List of Equipment Controlled by ECCN 4529B" for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

ECCN 1531A: Commodities described in paragraphs (a), (c), and (d) under the "Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A" as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 776.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 776.18(a).

ECCN 1564A: A-D converters described in paragraph (a)(6)(i) under the "List of Equipment Controlled by ECCN 1564A" when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 4564B: A-D converters described under the "List of Analog-to-Digital Converters Controlled by ECCN 4564B" when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 1565A: 1. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c) through (d), and (h) as applicable to (d), under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" for modeling, simulation, or design integration of the following: Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2. Technical data for analog or digital computers and related equipment that provide special capabilities as described in paragraphs (a), (b), and (f) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A."

ECCN 1568A: A-D converters described under the "List of Equipment Controlled by ECCN 1568A" when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 4568B: A-D converters described under the "List of Commodities Controlled by ECCN 4568B" when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 4587B: Commodities described in paragraph (c) under the "List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 4587B" when usable as launch and ground support equipment.

ECCN 1595A: Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

ECCN 1715A: Propellants and constituents as follows: High energy density fuels such as Boron Slurry, having an energy density of 40 x 10^6 joules/kg or greater.

ECCN 1746A: Propellants and constituents as follows: Polymeric substances, specifically: 1. Carboxy-terminated polybutadiene (CTPB), and 2. hydroxy-terminated polybutadiene (HTPB).

(5) Reciprocating diesel engine development and production technical data, including "specially designed software", as follows

(a) Development and production technical data, including "specially designed software", for reciprocating diesel engine ground vehicle propulsion systems having all of the following specifications:

(i) A box volume of 1.2 m^3 or less;

(ii) An overall power output of more than 750 kW based on 80/1269/EEC or ISO 2534; and

(iii) A power density of more than 700 kW/m^3 of box volume;

NOTE: The box volume is defined as the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The greatest of the following:

(A) The outside dimension from valve cover to valve cover;

(B) The dimension of the outside edges of the cylinder heads; *or*

(C) The diameter of the flywheel housing;

Height: The greater of the following:

(A) The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus two times the stroke; *or*

(B) The diameter of the flywheel housing.

(b) Development and production technical data for solid or dry film cylinder wall lubrication permitting operation at temperatures in excess of 723 K (450 °C) measured on the cylinder wall at the top limit of travel of the top ring of the piston;

(c) Production technical data for specially designed components, as follows, for "high output diesel engines":

(i) Production technical data for the parts listed in this paragraph (c)(i), when used together in low heat rejection engines and employing ceramic material(s) controlled by ECCN 1733A:

(A) Cylinder liners;

(B) Pistons;

(C) Cylinder heads; and

(D) One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

(ii) Production technical data for turbocharger systems, with single-stage compressors having all of the following characteristics:

(A) Operating at pressure ratios of 4:1 or higher;

(B) A mass flow in the range from 30 to 130 kg per minute; and

(C) Variable flow area capability within the compressor or turbine sections;

(iii) Production technical data for diesel fuel injection systems having all of the following characteristics:

(A) Maximum fuel injection pressure of 1 x 10^8 pascal (1,000 bar) or more;

(B) Injection amount in excess of 230 mm^3 injection per cylinder;

(C) Injection nozzle hole of 0.254 mm or less;

(D) Capability to complete fuel injection in 30 crank angle degrees or less;

(E) Electronic features for control of the fuel injection quantity, timing and duration throughout the engine speed and load range, through the use of appropriate sensors; *and*

(F) Designed for engines of more than eight cylinders.

NOTE: "High output diesel engines" are diesel engines with a specified brake mean effective pressure of 1.8 x 10^6 pascal (18 bar) or more at a speed of 2,300 r.p.m., provided that the rated speed is 2,300 r.p.m. or more.

(6) Technical data for aircraft and helicopter airframes, for aircraft propellers, and for aircraft and helicopter airframe, aircraft-propeller, and "helicopter-rotor-systems" components, as follows, and "specially designed software" therefor:

TECHNICAL NOTE: "Helicopter-rotor-systems" consist of hubs, blades, blade attachments and upper controls. Upper controls are those control elements located in the rotating system, including the swashplate if used.

(i) Design technical data using computer-aided aerodynamic analyses for integration of the fuselage, propulsion system and lifting and control surfaces to optimize aerodynamic performance throughout the flight regime of an aircraft;

(ii) Technical data for the design of active flight control systems, as follows:

(A) Technical data for configuration design for interconnecting multiple microelectronic processing elements (on-board computers) to achieve high-speed data transfer and high-speed data integration for control law implementation;

(B) Technical data for control law compensation for sensor location and dynamic airframe loads, i.e., compensation for sensor vibration environment and for variation of sensor location from center of gravity;

(C) Technical data for electronic management of systems redundancy and data redundancy for fault detection, fault tolerance and fault isolation;

NOTE: This paragraph does not control technical data for the design of physical redundancy in hydraulic or mechanical systems or in electrical wiring.

(D) Technical data for design of flight controls that permit in-flight reconfiguration of force and moment controls;

TECHNICAL NOTE:—Active flight control systems function to prevent undesirable aircraft motions or structural loads by autonomously processing outputs from multiple sensors and then providing necessary preventative commands to effect automatic control.

(iii) Design technical data for integration of flight control, navigation and propulsion control data into a flight management system for flight path optimization;

(iv) Design technical data for protection of avionic and electrical sub-systems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from sources external to the aircraft, as follows:

(A) Technical data for design of shielding systems;

(B) Technical data for the configuration design of hardened electrical circuits and sub-systems;

(C) Determination of hardening criteria for the above;

(v) Technical data for the design, production and reconstruction of adhesively bonded airframe structural members designed to withstand operational temperatures in excess of 120°C (248°F);

NOTE: Airframe structural members mentioned in this paragraph do not include engine nacelles and thrust reversers.

(vi) Technical data for the design and production of propeller blades constructed wholly or partly of composite materials, and specially designed hubs therefor;

NOTE: This paragraph does not control technical data for the production of propeller blades that are:

(a) Constructed wholly of wood or glass-fiber-reinforced plastics;

(b) Constructed mainly of wood or glass-fiber-reinforced plastics; and using other materials only in the leading edge or tip; *or*

(c) Constructed mainly of glass-fiber-reinforced or carbon-fiber-reinforced plastics.

(vii) Technical data for the design and production of digital electronic synchrophasers specially designed for propellers; technical data for the design of digital electronic controls for propellers; and technical data for the production of digital electronic controls for the propellers described in paragraph (vi) above;

(viii) Technical data for the design and production of active laminar flow control lifting surfaces;

NOTE: Design technical data covered by this paragraph includes the data used to substantiate the design approach.

(ix) Technical data for the development of helicopter multi-axis fly-by-light or fly-by-wire controllers that combine the functions of at least two of the following into one controlling element:

(A) Collective controls;

(B) Cyclic controls;

(C) Yaw controls;

(x) Technical data for the development of "circulation controlled" anti-torque or directional control systems for helicopters;

TECHNICAL NOTE: "Circulation-controlled" anti-torque and directional control systems utilize air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces. Buried fan-in-fin anti-torque designs fitted or not fitted with guide vanes such as the "fenestron" are excluded from this category.

(xi) Technical data for the development of helicopter rotor blades incorporating variable geometry airfoils;

TECHNICAL NOTE: Variable geometry airfoils utilize training edge flaps or tabs, or leading edge slats or pivoted nose droop, that can be controlled in position in flight.

(xii) Technical data for the development of active control of helicopter blades and other surfaces used to generate aerodynamic forces and moments;

TECHNICAL NOTE: Active control (of helicopter blades and other surfaces used to generate aerodynamic forces and moments) functions to prevent undesirable helicopter vibrations, structural loads, or helicopter rotor dynamic behavior by autonomously processing outputs from multiple sensors and then providing necessary preventive commands to effect automatic control.

(xiii) Technical data for the development and production of integrated automated propulsion and airfoil control systems for tilt wing and tilt rotor aircraft.

(7) Technical data including "specially designed software" for "helicopter power transfer systems" or for their specially designed components as follows:

(i) Technical data for the design of "helicopter power transfer systems" or for their specially designed components for computer-aided design (CAD) or computer-aided design/computer aided manufacturing (CAD/CAM). This includes design and analysis computer programs, parametric helicopter gear-box performance analysis and helicopter load-cycle analysis and selection;

(ii) Technical data for "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, for performance analysis and installation design studies, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

(iii) Technical data for the fabrication of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2), unless the technology remains listed in ECCN 1460A, Note 9, for a longer period;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such "helicopter power transfer system" listed technologies have been in bona fide "civil use" for more than six years, as defined in ECCN 1460A, Note 2.

(iv) Technical data for the fabrication of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR.

(v) Technical data for the assembly and production testing of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR.

(vi) Technical data for on-site installation, operation, maintenance and repair of "helicopter power transfer systems," covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T&V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(vii) Technical data for overhaul and refurbishing "helicopter power transfer systems" or for their specially designed components covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use, unless the technology remains listed in ECCN 1460A, Note 9, for a longer period;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such "helicopter power transfer system" listed technologies have been in bona fide "civil use" for more than six years, as defined in ECCN 1460A, Note 2.

(viii) Technical data for overhaul and refurbishing "helicopter power transfer systems" or for their specially designed components covered by ECCN 1460A, and which do not embody any technology listed in Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use.

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(8) Technical data, including "specially designed software" for gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, as follows:

(i) Technical data for the design of gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components for computer-aided design (CAD) or computer-aided design/computer-aided manufacturing (CAD/CAM). This includes design and analysis computer programs, parametric engine performance analysis, engine cycle analysis and selection, component aerodynamic design, airfoil cooling and seal design;

(ii) Technical data for specific gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, for performance analysis and installation design studies, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

(iii) Technical data for the fabrication of gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) unless the technology remains listed in ECCN 1460A, Note 8, for a longer period;

NOTE: The technical data [except technical data controlled for foreign policy purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such gas turbine aero-engines or aircraft gas turbine APU listed technologies have been in bona fide civil use for more than eight years, as defined in ECCN 1460A, Note 2.

(iv) Technical data for the fabrication of gas turbine aero-engines or gas turbine APUs or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

NOTE: The technical data [except technical data controlled for foreign policy purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR.

(v) Technical data for the assembly and production testing of gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

NOTE: The technical data [except technical data controlled for foreign policy purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR.

(vi) Technical data for on-site installation, operation, maintenance and repair of gas turbine aero-engines or aircraft gas turbine APUs covered by ECCN 1460A, shall require an individial validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(vii) Technical data for overhaul and refurbishing gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) after those engines have entered bona fide civil use, unless the technology remains listed in ECCN 1460A, Note 8, for a longer period;

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR provided that such gas turbine aero-engines or aircraft gas turbine APU listed technologies have been in bona fide civil use for more than eight years, as defined in ECCN 1460A, Note 2.

(viii) Technical data for overhaul and refurbishing gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in Note 8, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered bona fide civil use.

NOTE: The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(9) Technical data for marine gas turbine engines that are controlled under ECCN 1431A, as follows:

(i) Technical data that is common to aero-engine technical data controlled by paragraph (8) is controlled pursuant to paragraph (8) above;

(ii) Technical data for liquid-cooled turbine blades or vanes and nozzles capable of operating in hot gas temperature environments greater than 1,000°C and their associated systems;

TECHNICAL NOTES: "Associated systems" are closely connected to the engine and consist of the specially designed cooling fluid and fuel control systems, pumps, condensers and fluid purification systems;

(iii) Technical data for fuel nozzles, combustors and gas turbine engine-mounted fuel-handling systems (fuel pumping, metering and controls) that permit marine gas turbines to burn heavy residual fuel-oils (ASTM grades 5 and 6 or equivalent);

TECHNICAL NOTE: ASTM grade 5 residual fuel-oil has a maximum kinematic viscosity of 81 centistrokes at 50°C (122°F), and ASTM grade 6 residual fuel-oil has a kinmatic viscosity range of 92 to 638 centistokes at 50°C. Kinematic viscosity is measured by the Saybolt-furol viscosimeter (the test measures the time in seconds for 60 cc of the oil to pass through the furol orifice).

(iv) Technical data for high-temperature (above 700°C gas temperature) heat exchangers for pre-heating compressor exit air.

(v) Technical data for lightweight, compact combined gas turbine and steam (COGAS) systems having heat recovery rates of more than 40,000 BTU/hr. per cubic foot of waste heat boiler volume or more than 1000 BTU/hr. per pound of waste heat boiler weight, designed for use with gas turbine engines for marine propulsion or shipboard power generation.

(10) The following technical data related to commodities controlled by ECCN 1763A requires a validated license to all destinations, except Canada;

Technical data for "fibrous and filamentary" materials and for "composite" structures and laminates, as follows:

Technical data unique to the spinning and subsequent treatment of precursor materials into fibers specially designed for processing into carbon filamentary materials controlled for export by paragraphs (a) or (b) of ECCN 1763A;

Technical data for the production of "fibrous and filamentary" materials controlled for export by paragraphs (a) or (b) of ECCN 1763A;

Technical data for the production of prepegs controlled for export by paragraph (c) of ECCN 1763A using pressure impregnation or chemical vapor deposition, and for preforms controlled by paragraph (c) of ECCN 1763A using vacuum or pressure impregnation or chemical vapor deposition;

Technical data for the development and production of composite structures, laminates and manufactures controlled for export by paragraph (d) of ECCN 1763A; or

Technical data for rigidization and densification processes specially designed for the manufacture of carbon-carbon composite materials as follows:

(i) Impregnation, infiltration or deposition into "carbon fiber preforms";

(ii) Carbonization;

(iii) Graphitization;

(iv) Hot isostatic pressing.

[51 FR 36213, Oct. 9, 1986, as amended at 52 FR 27490, July 21, 1987; 52 FR 28545, July 31, 1987; 52 FR 29177, Aug. 6, 1987; 53 FR 35461, Sept. 14, 1988; 53 FR 35804, Sept. 15, 1988; 53 FR 38835, Oct. 3, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 26956, June 27, 1989; 54 FR 35175, Aug. 24, 1989; 54 FR 41057, Oct. 5, 1989; 55 FR 13123, Apr. 9, 1990; 55 FR 26086, June 20, 1990; 55 FR 26659, June 29, 1990; 55 FR 35829, Aug. 31, 1990; 55 FR 35840, Aug. 31, 1990]

SUPPLEMENT NO. 5 TO PART 779—QUESTIONS AND ANSWERS—GENERAL LICENSE GTDA

This supplement No. 5 contains explanatory questions and answers about General License GTDA. This Supplement is divided into six sections according to topic as follows:

Section A: Publication of technical data and exports of technical data that has been or will be published.

Section B: Release of technical data at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

Section E: Federal contract controls.

Section F: Commercial consulting.

Section G: Software.

Section H: Available in a public library.

Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign Journal a scientific paper describing the results of my research, which is in an area listed in § 779.4(d). Do I need a validated license?

Answer: No. General License GTDA permits unrestricted export to any destination not only of technical data that are already publicly available, but of technical data that are made public by the transaction in question (§ 779.3(a)(1)). Your research results would be made public by the planned publication. You would not need a validated license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the General License would not relieve you from any restrictions on publications that your employer or another sponsor of your research may have imposed.

Question A(3): Would it make any difference if I published in a foreign journal? Would I need a validated license to send the paper to the editors for review?

Answer: No to both questions. General license GTDA authorizes submission of papers to editors or reviewers of journals, including foreign journals, if the intention is that the papers will be published if favorably received § 779.3(b), last paragraph).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy. The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No; GTDA would still apply. But if you publish in violation of the controls you have accepted in the grant, you will be subject to appropriate administrative, civil, and possible criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects of the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is around $15,000. Does general license GTDA cover publication and sale of such handbooks or manuals?

Answer: No. The price is above the cost of reproduction and distribution (§ 779.3(b)(1)). Thus, you would need some other form of license before you could export any of these handbooks or manuals.

Question A(6): My Ph.D. thesis on a subject listed in § 779.4(d) has never been published for general distribution. However, it is available at the institution from which I took the degree. Do I need a validated license to send another copy to a collegue overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not "publicly available" and the GTDA license would not be available on that ground. The GTDA license would still be applicable if your PH.D research qualified as "fundamental research" under § 779.3(c). If not, however, you will need some other form of license before you can send a copy out of the country.

Question A(7): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need validated licenses to sell our products to foreign customers?

Answer: You would not need a validated license for otherwise controlled technical data or software if the technical data and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, General License GTDA authorizes the export if the technical data or software source code is in a library accessible to the public. (§ 779.3(b)(1).

Section B. Conferences

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed in § 779.4(d). Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged by a panel of scientific peers to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a validated license to give my paper?

Answer: No. General license GTDA is available for release of information at an open conference. The conference you describe fits the definition of an open conference (§ 779.3(a)(1) and (b)(4)).

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an "open" conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records as altogether prohibited, the conference would not be considered "open."

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend (§ 779.3(b)(4)(ii)(A)).

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a validated license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. General license GTDA authorizes submission of papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference and so made publicly available, if favorably received (§ 779.3(b), last paragraph).

Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may use GTDA to export the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the Export Administration Regulations relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

Section C: Educational Instruction

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a validated license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is licensed under general license GTDA (§ 779.3(d)).

Question C(2): Would it make any difference if some of the students were from Communist Bloc countries?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then the general license would apply, but the export Administration Regulations would not release you from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question C(6): We teach proprietary courses on design and manufacture of high-performance aircraft and missiles. Is the instruction in our classes covered by the GTDA license?

Answer: That instruction would not qualify as "release of educational information" under § 779.3(a)(3) because your proprietary business does not qualify as an "academic institution" within the meaning of § 779.3(d). Conceivably, however, the instruction might qualify as "release at an open * * * seminar, * * * or other open gathering" under § 779.3(b)(4). The conditions for qualification of such a seminar or gathering as "open," including a fee "reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons be able to attend," would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

Question D(1): Do I need a validated license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as "fundamental research" under § 779.3(c). In that case, the GTDA general license is available.

Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a Polish national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the Polish scientist. Do we need to obtain a validated license to protect against that possibility?

Answer: No. General License GTDA authorizes the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between a firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must qualify for another general license or obtain a validated license before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary export authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the Soviet Union who is an expert on research in engineered ceramics and composite materials. Do I require a validated license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of research results agreed to with a sponsor of the research, your research would qualify as "fundamental research" (§ 779.3(c)(2)). Unrestricted export of information arising during or resulting from such research is covered by general license GTDA (779.3(a)(2)). You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though licensed, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Export Administration, Office of Technology and Policy Analysis, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a Soviet expert in the Soviet Union?

Answer: No, if the information in question arose during or resulted from the same "fundamental research."

Question D(5): Could I properly do some work with him in his research laboratory inside the Soviet Union?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export is subject to the Export Administration Regulations (§ 779.1(b)(1)(iii) and (2)(iii) and § 779.2). Such an export must be licensed. If any of the knowledge or experience you export in this way is not covered by general license, you would need a validated license.

Question D(6): I would like to correspond and share research results with a Soviet-Bloc expert in my field, which is listed in § 779.4(d). Do I require a validated license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as "fundamental" under the rules spelled out in § 779.3(c).

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as "fundamental" would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as "fundamental." But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as "fundamental." As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as "fundamental" and so comes under general license GTDA.

Question D(8): In determining whether research is thus open and therefore counts as "fundamental," does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. "Fundamental research" is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies "fundamental research"—not the institutional locus (§ 779.3(c)).

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from an East Bloc country and discuss the results of the research with her when she visits the United States. Do I need a validated license to do so?

Answer: You probably do need a validated license (§ 779.3(c)(4)). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered "fundamental research," in which case you may be able to share information under the GTDA general license. Note that GTDA will not be available if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the GTDA license will apply and you will not need a validated license for this exchange (§ 779.3(c)(4)).

Question D(11): I work as a researcher at a Government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the Export Administration Regulations?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated "fundamental research" within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the GTDA license will apply. Otherwise, you would need some other form of license, except to publish or otherwise make the information public (§ 779.3(c)(3)).

Section E: Federal Contract Controls

Question E(1): In a contract for performance of research entered into with the Department of Defense, we have agreed to tain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as "fundamental research" under § 779.3(c). Does the GTDA license cover information arising during or resulting from this sponsored research?

Answer: Any "export" inconsistent with the controls you have agreed to will not qualify for export under GTDA as "fundamental research." Any "export" consistent with the controls will qualify for export under GTDA as "fundamental research." Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the Export Administration Regulations. If you violate those controls and export information as "fundamental research" under § 779.3(c), you may subject yourself to the sanctions provided for under the Export Administration Regulations, including criminal sanctions, in addition to administrative and civil remedies for breach of contract.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?

Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

Section F: Commercial Consulting

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a "third-world" company that wishes to manufacture such devices. Do I need a validated license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations (§ 779.1(b) (1)(iii) and (2)(iii), and § 779.2). Such an export must be licensed. If any part of the knowledge or experience you export in this way is not covered by general license, you would need a validated license.

Section G: Software

Question G(1): Does General License GTDA authorize the export of software in machine readable code when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore eligible for General License GTDA.

Question G(2): Does General License GTDA authorize the export of software sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

Question G(3): Does General License GTDA authorize the export of software sold at a price BXA concludes in a classification letter to be sufficiently low to qualify the particular software for General License GTDA?

Answer: In response to classification requests, BXA may choose to classify certain software as eligible for General License GTDA even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BXA.

Section H: Available in a Public Library

Question H(1): Does General License GTDA authorize the export of information available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library—itself accessible to the public—or has been published in any way, that information is "publicly available" for those reasons, and the information itself remains eligible for General License GTDA even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Does General License GTDA authorize the export of information available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Does General License GTDA authorize the export of information available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public qualifies for General License GTDA. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is "publicly available" even though the author makes a profit on your particular purchase for the inherent value of the information.

Section I: Miscellaneous

Question I(1): The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that an export license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, does General License GTDA authorize this type of export?

Answer: EAR § 779.1(b) defines exports of technical data to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Consequently, you must obtain export authorization prior to permitting foreign nationals to tour your facilities. Such an export qualifies under the "publicity available" provision of General License GTDA so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours (§ 779.3(a)(1)).

Question I(2): Does General License GTDA authorize the export of information not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become "publicly available" if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition of the technical data or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(3): Does General License GTDA authorize the export of information contributed to an electronic bulletin board?

Answer: Assume each of the following:

1. Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

3. The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

Such information is "publicly available" and therefore eligible for General License GTDA even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(4): Does General License GTDA authorize the export of patented information fully disclosed on the public record?

Answer: Information to the extent it is disclosed on the patent record open to the public is eligible for General License GTDA even though you may use such information only after paying a fee in excess of the cost of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however General License GTDA is nonetheless available because any person can obtain the technical data from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

[54 FR 40648, Oct. 3, 1989]

PARTS 780—784 [RESERVED]

PART 785—SPECIAL COUNTRY POLICIES AND PROVISIONS

Sec.

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AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 385 was redesignated as Part 785 at 53 FR 37751, Sept. 28, 1988.

§ 785.1 Country Group Z[1]; North Korea, Vietnam, Cambodia and Cuba.

(a) As authorized by section 6 of the Export Administration Act of 1979 and by the Trading With the Enemy Act of 1917 as amended by Pub. L. 95-223, a validated license is required for foreign policy purposes for the export and reexport of virtually all U.S.-origin commodities and technical data to destinations in Country Group Z. Certain exceptions are contained in Parts 771 and 779, and in ECCNs 7599 and 7999 on the Commodity Control List. Except as noted below, the general policy is to deny all applications or requests to export or reexport U.S.-origin commodities and technical data to these destinations. Exports of donations to meet basic human needs may be authorized under a Humanitarian License, as described in § 773.5. Such exports may also be authorized for single transactions under an individual validated license. Exports to meet emergency needs that do not qualify for export under the Humanitarian License procedure will be considered on a case-by-case basis. Exports of commercially-supplied goods to meet basic human needs may be authorized under an individual validated license on a case-by-case basis for destinations in North Korea. The types of commodities that may be supplied commercially to meet basic human needs are the same as those types of commodities described in Supplement No. 7 to Part 773, but are not restricted solely to small scale projects at the local level.

(b) North Korea and Cuba have been designated by the Secretary of State as countries that have repeatedly provided support for acts of international terrorism.

(c) On August 21, 1975, the U.S. Government announced modifications in those aspects of U.S. restrictions on trade with Cuba which affect third countries, in order to bring them into accord with the policy of the Organization of American States to allow each member state to determine for itself the nature of its economic and diplomatic relations with the Government of Cuba. In this context, the Department of Commerce generally will consider favorably on a case-by-case basis requests for authorization for the use of an insubstantial proportion of U.S.-origin materials, parts, or components in nonstrategic foreign-made products to be exported to Cuba, where local law requires, or policy in the third country favors, trade with Cuba. U.S.-origin content will generally be considered insubstantial when it amounts to 20 percent or less of the value of the product to be exported from the third country. Requests for authorization for the use of U.S. origin parts, components, or materials amounting to more than 20% by value of a foreign made product to be exported to Cuba generally will not be approved. See § 776.12(e) for instructions on submission of requests for authorization.

[47 FR 16624, Apr. 19, 1982, as amended at 47 FR 23439, May 28, 1982; 50 FR 29205, July 18, 1985; 51 FR 8484, Mar. 12, 1986; 52 FR 9151, Mar. 23, 1987; 53 FR 28863, Aug. 1, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 16360, Apr. 24, 1989]

§ 785.2 Country Groups Q, W, and Y[1]; U.S.S.R., other Warsaw Pact countries, Albania, Mongolian People's Republic, and Laos.

(a)(1) The Export Administration Act of 1979 states that it is the policy of the United States "to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest." The Act also states that it is the policy of the United States "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States." Accordingly, and in compliance with the other sections of the Export Administration Act of 1979, the Department conducts a continuing review of commodities and technology to assure that prior approval is required for the export or reexport of U.S.-origin commodities and technical data to the U.S.S.R., Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Laos, Latvia, Lithuania, Mongolian People's Republic, Poland, and Romania only if the commodities or technical data have a potential for being used in a manner that would prove detrimental to the national security of the United States. The general policy of the Department, however, is to approve applications or requests to export or reexport such commodities and technical data to these destinations (other than the U.S.S.R. and Poland) when the Department determines, on a case-by-case basis, that the commodities or technical data are for a civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

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[1] See Supplement No. 1 to Part 770 for listing of Country Groups.

(2) To permit such policy judgments to be made, each export application and reexport request is reviewed in the light of prevailing policies with full consideration of all relevant aspects of the proposed transaction. The review generally includes an analysis of the kinds and quantities of commodities or technologies to be shipped; their military or civilian uses; the unrestricted availability abroad of the same or comparable items; the country of destination; the ultimate end-users in the country of destination; and the intended end-use.

(3) Applications covering certain commodities and technical data that are controlled by the United States and certain other nations that cooperate in an international export control system and are proposed for export or reexport to Country Group Q, W, or Y may have to be forwarded to the Coordinating Committee (COCOM) of this international export control system for consideration in accordance with established COCOM procedures.

(4) Although each proposed transaction is considered individually, certain goods on the Commodity Control List are more likely to be approved than others. See the Advisory Notes for the applicable entry on the Commodity Control List (Supplement No. 1 to § 799.1).

(b) In support of U.S. foreign policy to promote the observance of human rights throughout the world, a validated export license is required to export any commodity particularly useful in crime control and detection to any destination in Country Group Q, W, or Y.

(c)—(e) [Reserved]

[43 FR 22344, May 25, 1978. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 785.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 785.3 [Reserved]

§ 785.4 Country Groups T&V.

(a) *Republic of South Africa.* In conformity with the United Nations Security Council Resolutions of 1963 and 1977 relating to exports of arms and munitions to the Republic of South Africa, and consistent with U.S. foreign policy toward the Republic of South Africa, the Department of Commerce has established the following special policies for commodities and technical data under its licensing jurisdiction.

(1) An embargo is in effect on the export or reexport to the Republic of South Africa of arms, munitions, military equipment and materials, and materials and machinery for use in manufacture and maintenance of such equipment. Commodities to which this embargo applies are listed in Supplement No. 2 to Part 779 of this chapter.

(2) An embargo is in effect on the export or reexport to the Republic of

South Africa of *any* commodity, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in South Africa or used to service equipment owned, controlled or used by or for such military or police entities. (See paragraph (a)(7) and (10) of this section for case-by-case exceptions.)

(3) An embargo is in effect on the export or reexport to the Republic of South Africa of technical data—except technical data generally available to the public that meets the conditions of General License GTDA—where (i) the technical data relate to the commodities listed in Supplement No. 2 to Part 779 of this chapter, (ii) the exporter or reexporter knows or has reason to know that the technical data or any product of the data as defined in § 779.4(e) of this chapter are for delivery to or for use by or for the military or police entities of South Africa or for use in servicing equipment owned, controlled or used by or for these entities (see paragraph (a)(7) and (10) of this section for case-by-case exceptions), or (iii) the technical data consist of data to service computers or of computer software and the exporter or reexporter knows or has reason to know that it will be made available to or for use by or for apartheid enforcing entities identified in Supplement No. 1 to Part 785 (with case-by-case exceptions possible for humanitarian purposes). In addition, users in the Republic of South Africa of technical data that do qualify for export or reexport under the provisions of General License GTDR must provide a written assurance to the U.S. exporter as required by § 779.4(e)(2) of this chapter.

(4) Parts, components, materials and other commodities exported from the United States under either a general or validated export license may not be used abroad to manufacture or produce foreign-made end-products where it is known or there is reason to know the end-product will be sold to or used by or for military or police entities in the Republic of South Africa. (See § 785.4(a)(7) and (10) for case-by-case exceptions.)

(5) A validated export license is required for the export to the Republic of South Africa of any instrument and equipment particularly useful in crime control and detection, as defined in § 776.14 of this chapter.

(6) General License GIT may not be used for any commodity destined for the Republic of South Africa (see § 771.4(b) of this chapter).

(7) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of medicines, medical supplies, medical equipment, related technical data, and parts and components, to any end-user.

(8) A validated license is required for export to all consignees of aircraft and helicopters. Applications will generally be considered favorably on a case-by-case basis for such exports for which adequate written assurances have been obtained against military, paramilitary, or police use.

(9)(i) A validated license is required for the export or reexport to government consignees of computers as defined in CCL entries 1565A and 6565G, and of goods to service or manufacture computers. "Goods to service or manufacture computers" include any national security-controlled item intended for such use, and any items in ECCN 6594F. Applications will be denied if the export is likely to be used by or for apartheid enforcing entities identified in Supplement No. 1 to Part 785, with case-by-case exceptions possible for humanitarian purposes.

(ii) Insubstantial U.S. origin parts or peripherals in foreign origin computer systems may be approved on a case-by-case basis. Content is generally considered to be insubstantial when it is 20% or less by value.

(iii) Applications to export computers or goods to service or manufacture computers to the Republic of South Africa must be accompanied by the following certification signed by the ultimate consignee:

I (We) certify that we are the recipient of the commodities to be delivered under this license, that we are not affiliated with any apartheid-enforcing entity, and that the commodities will not be sold or otherwise made available, directly or indirectly, to or for use by or for the following entities in the Republic of South Africa: police or military entities, any entity involved directly or indirectly in either a nuclear or sensitive nuclear end use, or entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 785 of the Export Administration Regulations. These commodities are not to be used to service computers owned, controlled, or used by or for the entities indicated above, or used to manufacture computers intended for such entities. I (We) will cooperate with post-shipment inquiries by U.S. officials to verify disposition or use of the commodities. If requested by the exporter, we will periodically provide information concerning the disposition or use of commodities received under this license, including the identity of customers to whom the items were resold.

NOTE: See §§ 773.3(a)(2) and 778.3 for definitions relating to nuclear end uses.

(iv)(A) Exporters shall make available to each ultimate consignee a current copy of Supplement No. 1 to Part 785 identifying apartheid enforcing entities. OEL may require the licensee to certify subsequent to delivery that the computers have not been retransferred to unauthorized end-uses or end-users.

(B) When the license authorizes resale within the Republic of South Africa, the requirement may include identification of customers to whom the ultimate consignees have sold the computers, with further identifications of customers to be provided at six month intervals until all computers exported under the license have been sold.

(10) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of commodities and related technical data, and parts and components, to be used in efforts to prevent acts of unlawful interference with international civil aviation.

(11) Applications for validated licenses for commodities and technical data for nuclear production or utilization facilities or those likely to be diverted to such facilities will be denied, except on a case-by-case basis to assist International Atomic Energy Agency (IAEA) safeguards or IAEA programs generally available to member states, or for technical programs to reduce proliferation risks, or for exports that are determined to be necessary for humanitarian reasons to protect the public health and safety.

(12) License applications involving contracts entered into prior to the President's Executive Order of September 9, 1985, will be considered on a case-by-case basis in accordance with the regulations and policies that were in effect prior to the issuance of such Order. Applications involving contracts entered into on or after September 9, 1985, will be subject to the October 11, 1985, revisions to the regulations that implement that Order. Applications involving contracts for equipment and technical data intended to manufacture computers entered into on or after October 2, 1986 will be subject to the restrictions imposed pursuant to the Comprehensive Anti-Apartheid Act of 1986. Those involving contracts entered into prior to that date will be considered on a case-by-case basis consistent with the purposes of that Act.

(13) Pursuant to section 321 of the Comprehensive Anti-Apartheid Act of 1986, a validated license is required for the export from the United States to the Republic of South Africa of crude oil (ECCN 4781B) and refined petroleum products (ECCNs 4782B, 4783B and 4784B). License applications for these commodities will be denied. In addition, reexport authorization is required for any export of such commodities from outside the United States to South Africa if the commodities originated in the United States and are being exported by a person or firm subject to the jurisdiction of the United States. For purposes of this paragraph, the term "person subject to the jurisdiction of the United States" means:

(i) Any U.S. citizen or permanent resident alien, except if acting in the course of employment by a juridical person organized under the laws of a foreign jurisdiction;

(ii) A juridical person organized under the laws of the United States or

(iii) Any person in the United States defined to include those territories listed in § 770.2.

The reexport provisions of Part 774 and the provisions of § 776.12 are not applicable to the controls covered by this paragraph § 785.4(a)(13), except in the case of reexport to South Africa by a person subject to the jurisdiction of the United States as defined above. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to the Republic of South Africa is prohibited. Pursuant to section 604 of the CAA, no person may undertake or cause to be undertaken any transaction or activity with the intent to evade the restrictions described herein.

(14) The South African administration of the port of Walvis Bay requires special attention because of the possibility that commodities or technical data entering Walvis Bay will be available to South Africa. Accordingly, shipments to and for consumption in Walvis Bay will be considered exports to South Africa. Shipments passing through Walvis Bay to Namibia are not subject to the controls on exports to South Africa. The purpose of this action is not to deny commodities to Namibia nor to imply recognition of South Africa's claim of sovereignty over Walvis Bay. Instead, the goal is to implement more effectively the foreign policy controls already in place for South Africa.

(b) [Reserved]

(c) *People's Republic of China.* (1) The general licensing policy is to consider exports for China under the Country Group T and V policies set forth in paragraph (g) of this section, except that there are certain commodities, data, and end-uses that may require extended review or denial. Of particular concern are exports that would make a direct and significant contribution to nuclear weapons and their delivery systems, electronic and anti-submarine warfare, intelligence gathering, power projection, and air superiority. Licenses may be approved even when the end-user or end-use military. Commodities or data may be approved for export even though they may contribute to Chinese military development.

(2) Each application will be considered individually. The Advisory Notes in the CCL (Supplement No. 1 to § 799.1) headed "Note for the People's Republic of China" provide guidance on equipment likely to be approved most rapidly for China and that for the most part will not require any inter-agency review. Items with higher performance levels than those described in the Advisory Notes may also be approved on a case-by-case basis.

(3) Applications covering commodities and technical data approved by the United States that are controlled by the COCOM international export control system may have to be forwarded to COCOM for consideration in accordance with established procedures before a license is issued.

(d) *People's Democratic Republic of Yemen, Syria, and Iran.* (1) A validated license is required for foreign policy purposes for the export to the People's Democratic Republic of Yemen, Syria, or Iran (countries that have repeatedly provided support for acts of international terrorism) of crime control and detection equipment (see § 776.14), military vehicles and items specially designed to produce military equipment as defined in CCL entries 2018A, 1118A, 2406A, and 2603A (see § 776.16), and certain other commodities as specified below.

(2) For the People's Democratic Republic of Yemen, a validated license is required for the export of aircraft valued at $3 million each or more and helicopters as defined in CCL entries 1460A(a), 1460A(b), 2460A and 5460F, except aircraft and helicopters for use by regularly scheduled airlines based in the People's Democratic Republic of Yemen for which assurances have been submitted to OEL against military use, and of goods or technology subject to national security controls if the export is destined to military end-users or for military end-use and is valued at $7 million or more. In the case of the use abroad of U.S.-origin parts, components or materials in foreign-origin products, the dollar limits set forth above apply to the U.S. content. Applications for validated licenses will be considered on a case-by-case basis to determine whether issuance of a license would be consistent with the provisions of section 6 and the applicable policies set forth in section 3 of the Act (exports subject to

national security controls must also meet the national security provisions of the Act). Licenses and authorizations for helicopters 10,000 pounds empty weight or less will be approved when the export is in performance of a contract or agreement entered into before April 28, 1986, but subject to applicable national security or other applicable controls. When the request for authorization involves use of U.S.-origin parts, components, or materials in foreign-origin products destined for the People's Democratic Republic of Yemen, licensing decisions will take into account whether the U.S. content is 20% or less by value.

(3)(i) For Iran, a validated license is required for foreign policy purposes for the export of the following items:

(A) All commodities and technical data subject to national security controls if the export is destined to a military end-user or for military end-use;

(B) All aircraft and helicopters and related parts and components, as defined in CCL entries 1460A, 2460A, 4460B, 5460F, 6460F, 1485A, 6498F, 1501A(a), (b)(1), and (c)(1) and 6598F;

(C) All mobile communications equipment and specially designed parts as defined in CCL entries 1502A(b), 1516A, 1517A, 1531A, and 6598F;

(D) All boats, including inflatable boats, and specially designed parts as defined in CCL entries 1416A and 6498F;

(E) All off-highway wheel tractors as defined in CCL entry 6490F;

(F) All large diesel engines and specially designed parts that can be used to power tank transporters, as defined in CCL entries 6394F, 2406A, and 6498F;

(G) All portable electric generators and specially designed parts as defined in CCL entry 6294F;

(H) All marine and submarine engines and equipment and specially designed parts as defined in CCL entries 1372A, 6394F, 5406C, 2409A, 1431A, 4431B, 5431C, 1460A, and 6494F;

(I) All surface effect and hydrofoil vessels and equipment as defined in CCL entry 1416(a), (b), (c), and (h);

(J) All acoustic underwater detection equipment and specially designed parts therefore as defined in CCL entries 2409A, 1510A, 5510C, and 6598F;

(K) All naval equipment as defined in CCL entry 2409A;

(L) All underwater camera equipment and specially designed parts as defined in CCL entries 1417A, 6498F, and 6598F;

(M) All submersible systems and specially designed parts as defined in CCL entries 1417A, 1418A, 2418A, 6498F, and 1526A(a);

(N) All pressurized aircraft breathing equipment and specially designed parts as defined in CCL entries 2410A and 6994F;

(O) All sonar navigation equipment as defined in CCL entry 5510C;

(P) All electronic test equipment and specially designed parts as defined in CCL entries 1529A, 1531A, 1533A, 1584A, and 6598F;

(Q) All cryptographic equipment and specially designed parts as defined in CCL entries 1527A and 6598F; and

(R) All items defined in CCL entries 2414A, 1520A, 1526A, 1537A, 1555A, and 2913A.

(ii) Applications for export to Iran of commodities and technical data subject to these controls will generally be denied.

(A) However, applications may be considered on a case by case basis if the transaction involves the export or reexport of goods or technical data under a contract that was in effect before:

(*1*) January 23, 1984, in the case of helicopters over 10,000 lbs. empty-weight, aircraft valued at $3 million or more each, or national security controlled items identified in paragraphs (d)(3)(i) (A) or (B) of this section and valued at $7 million or more; or

(*2*) September 28, 1984, in the case of marine outboard engines with a horsepower of 45 or more and all other commodities or technical data identified in paragraphs (d)(3)(i) (A) or (B) of this section, except aircraft parts and components defined in CCL entries 6498F or 6598F.

(B) Applications will not be denied under this § 785.4(d)(3) if the transaction involves the export or reexport of goods or technical data under a contract that was in effect before October

22, 1987, in the case of all other commodities.

(C) Applications may be considered favorably on a case-by-case basis if:

(*1*) The transaction involves the reexport to Iran of items where Iran was not the intended ultimate destination at the time of the original export from the United States, if:

(*i*) In the case of helicopters over 10,000 lbs. empty-weight, aircraft valued at $3 million or more each, or national security controlled items identified in paragraphs (d)(3)(i) (A) or (B) of this section and valued at $7 million or more, the export from the U.S. occurred prior to January 23, 1984;

(*ii*) In the case of marine outboard engines with a horseposer of 45 or more and all other commodities or technical data identified in paragraphs (d)(3)(i) (A) or (B) of this section, except aircraft parts and components defined in CCL entries 6498F or 6598F, the export from the U.S. occurred prior to September 28, 1984; or

(*iii*) In the case of all other commodities, the export from the U.S. occurred prior to November 27, 1987;

(*2*) The U.S. content of foreign-produced commodities is 20% or less by value; or

(*3*) The commodities will be used for humanitarian purposes.

Applicants who wish such factors to be considered in reviewing their license applications must submit adequate documentation demonstrating the existence of the pre-existing contract, the date of export from the United States, or the value of the U.S. content.

(iii) The reexport provisions of 15 CFR Part 774 and the provisions of § 776.12 do not apply to the foreign policy controls of § 785.4(d)(3) for commodities defined in CCL entries 6294F, 6394F, 5406C, 5431C, 6490F, 6498F, 5510C, 6598F or 6994F. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran is prohibited without a validated license.

(4)(i) For Syria, a validated license is required for the export of all aircraft and helicopters, and related parts and components, as defined by CCL entries 1460A, 2460A, 4460B, 5460F, 6460F, 1485A and 1501A(a), (b)(1) and (c)(1), and all goods and technical data subject to national security controls. For purposes of this § 785.4(d)(4), technical data subject to national security controls are those data set forth in § 779.4(c) and (d). Applications for exports to Syria of commodities and technical data subject to these controls will generally be denied. However, applications will be considered favorably on a case-by-case basis if:

(A) The transaction involves the export or reexport of goods or technical data under a contract involving shipment to Syria that was in effect before:

(*1*) April 28, 1986, in the case of helicopters 10,000 pounds empty weight or less; or

(*2*) December 16, 1986, for all other commodities except those described in paragraph (d)(4)(iii) of this section; or

(B) The transaction involves the reexport to Syria of goods where Syria was not the intended ultimate destination at the time of the original export from the United States, *if*—

(*1*) In the case of helicopters 10,000 pounds empty weight or less, they had been exported from the U.S. prior to April 28, 1986; or

(*2*) In the case of other commodities, except those described in paragraph (d)(4)(iii) of this section, they had been exported from the U.S. before June 18, 1987; or

(C) The U.S. content of foreign-produced commodities is 20% or less by value; or

(D) The commodities are medical equipment.

(ii) Applicants who wish such factors to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the existence of the pre-existing contract, the specifications and intended medical use of the equipment, or the date of export from the United States.

(iii) The favorable consideration policies set forth in § 385.4(d)(4) do not apply to aircraft valued at $3,000,000 or more or to helicopters exceeding 10,000 pounds empty weight (unless they are destined for a regularly scheduled airline with assurance against military use), or to national security controlled goods valued at $7,000,000 or more destined for military end-users or end-uses.

(5) The appropriate Congressional Committees identified in Section 6(j) of the Act will be notified 30 days before any application falling under this subsection valued at $1 million or more is approved.

(e) *Iran: scuba gear.* In support of U.S. foreign policy concerns, a validated license is required for the export to Iran of self-contained underwater breathing apparatus and related equipment, including the equipment listed in ECCN 5398F, all of which is herein referred to as scuba gear. Applications for export to Iran of commodities subject to these controls will generally be denied.

(f) *Afghanistan.* The Soviet military presence in Afghanistan requires special attention to exports because of the likelihood that commodities or technical data entering Afghanistan will be available to the U.S.S.R. Accordingly, the validated licensing requirements for the U.S.S.R. extend to shipments to Afghanistan. The purpose of this action is not to deny commodities or technical data to Afghanistan but to implement more effectively those national security and foreign policy controls already in existence with regard to the U.S.S.R. Accordingly, the statutory bases for controlling such shipments to Afghanistan parallel those for the U.S.S.R. With regard to applications for shipments subject to national security controls, the general policy is to deny such applications if they would be denied if destined for the U.S.S.R.

(g) *Other countries in Groups T and V*—(1) *General policy.* For other countries in Country Groups T and V, the Department of Commerce requires prior approval for the export or reexport of selected commodities and technical data that include:

(i) Commodities the United States and other Free World governments have agreed to control *vis a vis* their export to Communist destinations in Europe and the Far East, and

(ii) Certain other commodities that the United States considers to have high potential for strategic use, including nuclear-related commodities. Technical data relating to a few commodities of particular strategic significance also are subject to the prior approval procedure. (See § 779.4 for technical data controls, which may vary with country of destination and type of data.)

(iii) The policy generally is one of approval of applications unless there is a significant risk that the commodities or data will be used or diverted contrary to the objectives of a specific U.S. export control program.

(2) *Crime control and detection commodities.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, an individual validated export license is required to export any crime control and detection equipment as defined in § 776.14 to any destination in these country groups except Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin,) Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.

(3) *Regional stability commodities and equipment.* In support of U.S. foreign policy to maintain regional stability, an individual validated export license is required to export military vehicles and certain commodities used to manufacture military equipment identified in § 776.16, to any destination in these country groups except Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom. (See § 785.7 for regional stability controls on exports to Libya.)

(The information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 0625-0156)

[35 FR 9185, June 12, 1970. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 785.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 785.5 [Reserved]

§ 785.6 Canada.

Except as indicated below, the general policy is to permit shipments of commodities and technical data to Canada for consumption or use in that country without an export license. When the commodities or technical data are transiting Canada or are intended for reexport from Canada to another foreign destination and such shipment would require a validated license if made directly from the United States to that destination, an export license or reexport authorization is required. The licensing action will be based on the policy applicable to a direct shipment from the United States to such other destination. (See §§ 774.1 and 786.1(d) for commodities in transit via Canada.) A validated license also is required for export to Canada if:

(a) The technical data are described in § 779.4(c) or § 779.5(e) unless the technical data may be exported under the provisions of General License *GTDA*; or

(b) The Commodity Control List (Supplement No. 1 to § 799.1) indicates that a validated license is required for export to Canada.

[46 FR 870, Jan. 5, 1981, as amended at 46 FR 38349, July 27, 1981; 53 FR 12669, Apr. 15, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 785.7 Country Group S; Libya.

As authorized by section 6 of the Export Administration Act of 1979, the following special policies and procedures for commodities and technical data are in effect for Libya for foreign policy purposes.

NOTE: The Libyan Sanctions regulations (31 CFR Part 550) administered by the Department of the Treasury restrict exports from the United States to Libya. As reflected in the General Order contained in § 790.7, effective February 1, 1986, a license issued under the Treasury regulations will constitute an authorization under the Export Administration regulations for an export from the United States. No license application need be filed with Commerce. Shipments to Libya from foreign countries that are subject to the provisions of 15 CFR Part 774, §§ 776.12 and 779.8 and this section and are not subject to the Libyan Sanctions regulations continue to require authorization under the Export Administration regulations.

(a) Except as stated below, a validated license or reexport authorization is required for all U.S.-orgin commodities or technical data, as well as foreign produced products of U.S. technical data exported from the United States after March 12, 1982 subject to national security controls for which written assurances against shipments to Libya are required under § 779.4 of the Export Administration Regulations. Excepted from this licensing requirement are medicines and medical supplies, food and other agricultural commodities, and commodities and data exported pursuant to special general licenses described in Parts 771 and 779.

(1) Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technical data, including controlled foreign produced products of U.S. technical data exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technical data, if determined by the Export Administration not to be readily available from sources outside the United States; and

(iii) Goods and technical data destined for the petrochemical processing complex at Ras Lanuf, where such items would contribute directly to the development or construction of that complex. Items destined for the township at Ras Lanuf, or for the public utilities or harbor facilities associated with that township, generally will *not* be regarded as making such a contribution where their functions will be primarily related to the township, utilities or harbor.

(2) Notwithstanding the presumptions of denial in paragraph (a)(1) of this section:

(i) Licenses and authorizations generally will be issued when the transaction involves:

(A) The export or reexport of commodities or technical data under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(B) Reexport of goods or technical data not controlled for national security purposes that had been exported from the United States prior to March 12, 1982, or exports of foreign products incorporating such items as components; or

(C) Use of U.S. origin parts, components, or materials in foreign origin products destined for Libya, where the U.S. content is 20 percent or less by value.

(ii) Licenses and authorizations will generally be considered favorably on a case-by-case basis when the transaction involves:

(A) Reexports of goods or technical data subject to national security controls that were exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(B) Items destined for use in the development or construction of the petrochemical processing complex at Ras Lanuf, where the transaction could be approved but for the general policy of denial set out in paragraph (a)(1)(iii) of this section, and where either:

(*1*) The transaction involves a contract in effect before December 20, 1983 that requires export or reexport of the goods or technical data in question; or

(*2*) The goods or technical data had been exported from the U.S. before that date.

(C) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(3) All other exports and reexports will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(b) Libya has been designated by the Secretary of State as a nation repeatedly supporting acts of international terrorism. For licensing requirements relating to Anti-Terrorism Controls see 15 CFR 785.4(d).

(c) A validated license is required for the export to Libya of off-highway wheel tractors of carriage capacity of 10 tons or more, as defined in CCL entry 6490F. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of such tractors in reasonable quantities if for civil use.

(d) A validated license is required for foreign policy purposes for the export or reexport to Libya of any aircraft (including helicopters) and any parts and accessories controlled under ECCNs 1460A, 2460A, 4460B, 5460F, 6460F, 1485A, and 1501A(a), (b)(1) and (c)(1). This control includes any such aircraft parts intended for use in the manufacture, overhaul, or rehabilitation in any third country of aircraft that will be exported or reexported to Libya or Libyan nationals. Applications for validated licenses will generally be approved on a case-by-case basis for aircraft unlikely to be diverted to military use because they are destined to a priority civil use. Applications will generally be denied for exports that would constitute a high risk of increasing Libyan capabilities to carry military cargo or troops or to conduct military reconnaissance or observation missions.

(e) In appropriate cases, applications for licenses and requests for extensions of licenses under paragraph (a) of this section must be accompanied by a certified true copy of a contract entered into prior to March 12, 1982. Where the custom in an industry is to rely upon agreements other than contracts, substitute documentation will be considered on a case-by-case basis. Requests for authorization to reexport must be accompanied by shipping documents establishing the date of export from the United States.

(f) Commodities and technical data subject to more than one type of control (e.g., national security, anti-terrorism, regional stability, nuclear nonproliferation) will be reviewed under all applicable standards. The most restrictive standard will be applied.

[47 FR 11249, Mar. 16, 1982, as amended at 49 FR 10248, Mar. 20, 1984; 50 FR 3743, Ja 28, 1985; 51 FR 2354, Jan. 16, 1986; 51 FR 8485, Mar. 12, 1986; 51 FR 9649, Mar. 2 1986. Redesignated at 53 FR 37751, Sept. 2 1988 and amended at 53 FR 40411, Oct. 1 1988]

Supplement No. 1 to Part 785—South Africa Entities Enforcing Apartheid

The following have been identified as South African entities that enforce apartheid. Exporters should be aware that this list cannot be all-inclusive because names of agencies are subject to change, and because agencies may assume apartheid enforcing activities in the future. Before making commitments to export, exporters may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520, to ascertain whether or not a potential customer is an "agency enforcing apartheid."

Ministry of Justice
Ministry of Home Affairs and National Education
Ministry of Constitutional Development and Planning
Ministry of Law and Order
Ministry of Manpower
Department of Public Works and Land Affairs
Ministry of Education and Development Aid, including the Development Boards and the Rural Development Boards (formerly known as the Ministry of Cooperation, Development and Education), but excluding the Department of National Education and Training.

Other agencies enforcing apartheid, including local, regional and "Homeland" agencies, e.g., those that regulate employment, classification, or residence of nonwhites.

Note: The Department of State has determined that the following agencies are not considered to be apartheid enforcing entities:

Ministry of Communication and Public Works (This includes post and telecommunication agencies)
Ministry of Agricultural Economics and Water Affairs
Ministry of Mineral and Energy Affairs
Ministry of Finance
Department of Transportation

[50 FR 47366, Nov. 17, 1985, as amended at 52 FR 27798, July 24, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

Supplement No. 2 to Part 785—Interpretations

1. The Department has received inquiries as to whether certain entities in the Republic of South Africa and Namibia are considered police or military entities and hence subject to the embargo policy set forth in § 785.4.

(a) In addition to the military and police of South Africa and Namibia, the following are considered to be police or military entities:

ARMSCOR (Armaments Development and Production Corporation) and its subsidiaries (Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentron (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering Works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressing (P.M.P.) (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telacast (Pty) Ltd., and Musgrave Manufacturers and Distributors)

Department of Prisons
"Homeland" Police and Armed Forces
National Institute for Aeronautics & Systems Technology (NIAST) of the Council for Scientific & Industrial Research (CSIR)
National Intelligence Services
South African Railways Police Force
Weapons research activities of the Council for Scientific and Industrial Research (CSIR)

(b) It is also the Department's position that certain municipal and provincial law enforcement officials, such as traffic inspectors and highway patrolmen, although separate from the South African police, are police entities because they have functions that are performed by the police in the United States. Other law enforcement entities and officials that do not have functions performed by the police in the United States, such as the Department of Customs, Department of Justice, health inspectors and licensing authorities, are not considered police entities.

[43 FR 43450, Sept. 26, 1978, as amended at 47 FR 40540, Sept. 15, 1982; 48 FR 3361, Jan. 25, 1983; 50 FR 47366, Nov. 18, 1985; 52 FR 2107, Jan. 20, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 786—EXPORT CLEARANCE

Sec.

786.1 General export clearance requirements.
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786.10 Other applicable laws and regulations.

Sec.
SUPPLEMENT NO. 1 TO PART 786

AUTHORITY: Public Law 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985) and Pub. L. 100-418 of August 23, 1988; Pub. L. 95-223 of December 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

SOURCE: 13th Gen. Rev. of Export Regs., 37 FR 12222, June 21, 1972, unless otherwise noted. Redesignated at 53 FR 37751, Sept. 28, 1988.

§ 786.1 General export clearance requirements.

(a) *Responsibility of licensee and agent.* Under the Export Administration regulations, the exporter to whom a validated license is issued or who undertakes to export under a general license is legally responsible for the proper use of that license and for the due performance of all its terms and provisions. This responsibility continues even when he acts through a freight forwarder or other forwarding agent.

(b) *Exports by mail*—(1) *Validated license shipments.* No export under a validated license may be made by mail, including surfaces and air parcel post, until the sender (exporter) has entered the complete validated license number on the address side of the parcel and on a duly executed Shipper's Export Declaration covering the commodity to be mailed, whether or not a declaration is required by the Bureau of Customs.[1]

(2) *General license shipments and shipments without an export license*—(i) *Declaration required.* Unless otherwise set forth specifically by the *Export Administration Regulations* or by the Bureau of Census' *Foreign Trade Statistics Regulations* (see Subpart D for exceptions), the sender shall present to the post office at the place of mailing a duly executed Declaration for each shipment to any destination under a general license (or to Canada or any other destination for which an export license is not required), from one business concern to another business concern, when the value of the commodity(ies) to be shipped exceeds $500. A Declaration is not required for noncommercial shipments.

(ii) *Designation on declaration and parcel.* The sender shall enter on the declaration the symbol of the applicable general license. Regardless of whether a declaration is required, the general license symbol shall also be written on the address side of the parcel followed by the phrase "Export License Not Required." No notation need be made on the package if the export is made under General License GTDA or GTDR. In addition, for a gift parcel exported under General License GIFT, the word "GIFT" shall be entered on the customs declaration tag. The general license symbol and phrase constitute a certification by the sender to the post office and to the Office of Export Control that the shipment is made under the authority of the general license indicated.

(c) *Exports by means other than mail*—(1) *Presentation of declaration.* Except as provided in paragraph (c)[illegible] of this section, the exporter or his agent must present a duly executed Shippers' Export Declaration to the exporting carrier before the vessel, aircraft, or overland transport departs. The exporting carrier is responsible for the completeness and accuracy of the information on the declaration regarding the name of the exporting carrier (and flag for shipments by vessel), foreign port of unloading, and bill of lading or air waybill number. If the carrier is required to file a cargo manifest with the Bureau of Customs, the declaration shall be submitted with the manifest. If the carrier is not required to file a cargo manifest with the Bureau of Customs, the declaration must be submitted before the carrier departs.

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[1] Shipper's Export Declaration. Form 7525-V, may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, local customs offices, and U.S. Department of Commerce Field Offices (see list on page i under Field Office Addresses). Price of the form is $1 for a pad of 100.

(2) *Exceptions from Shipper's Export Declarations.* All parties exempt from filing a Shipper's Export Declaration are required by the Bureau of the Census *Foreign Trade Statistics Regulations*, 15 CFR 30.50, to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the *Foreign Trade Statistics Regulations* where the exemption is provided. If the exemption is based on value and destination, no reference to the specific section containing the exemption need be made. All forwarders or brokers exempt from filing an individual Shipper's Export Declaration in accordance with monthly reporting procedures (FTSR 15 CFR 30.39) on behalf of exporters not otherwise exempted from the filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document, in those instances when a license is required, the Bureau of Export Administration general license symbol or validated license number and expiration date. This requirement applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a "master" bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document shall be available for inspection along with the goods or data prior to lading on the carrier. A Declaration is not required for:

(i) Any shipment, other than a shipment made under a validated export license, to Country Group T or V if the shipment is valued at $2500 or less. (As used here "shipment" means all commodities classified under a single seven-digit Schedule B Number, shipped on the same carrier, from one exporter to one importer.);

(ii) Any shipment reported under the provisions of the Monthly Rep Procedure (§ 786.3(r)) or

(iii) Any shipment made under any other exception provided elsewhere in this part or in Part 771 of this chapter. (A complete list of such exceptions is set forth in Subpart D of the Census Bureau Foreign Trade Statistics Regulations.)

(3) *Exports not requiring a license.* Unless otherwise set forth in the Export Administration Regulations or in the Bureau of the Census Foreign Trade Statistics Regulations (See Subpart D), a declaration is required for exports to Canada or to any other destination not requiring either a validated or a general license.

(d) *Shipments transiting Canada*—(1) *Shipments moving under individual Shipper's Export Declaration.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is required pursuant to Part 786, the U.S. exporter shall submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. Shipper's Export Declaration, Form 7525-V, certified by the exporter as "A True Copy" of the original Declaration.

(2) *Shipments for which individual Declarations are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is *not* required because:

(i) The forwarder or broker is authorized to report export information to Census by means other than an individual Shipper's Export Declaration; or

(ii) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau *Foreign Trade Statistics Regulations*), the forwarder or broker must include license information on his bill of lading or other loading document as directed in § 786.1(c)(2). The properly annotated bill of lading or other loading document, along with the license authorization, when required, shall be displayed to the Canadian Customs authorities at the Canadian port of entry and a copy provided, if requested by the Canadian authorities.

[13th Gen. Rev. of Export Regs., 37 FR 12222, June 21, 1972, as amended at 39 FR 1749, Jan. 14, 1974; 45 FR 46802, July 11, 1980; 48 FR 26450, June 8, 1983; 52 FR 6139, Mar. 2, 1987; 53 FR 25146, July 5, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055, Mar. 30, 1989; 55 FR 31577, Aug. 3, 1990]

§ 786.2 Use of validated license.[2]

(a) *License valid for shipment from any port.* Unless otherwise noted on the face thereof a validated license authorizes exports from the United States from any port of export. Commodities or technical data that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license*—(1) *Commodities ready for loading or laden.* (i) Commodities may depart with the exporting vessel even though the vessel does not clear until after the expiration of the license, provided that prior to midnight of the expiration date of the license, the commodities:

(A) Were laden aboard the vessel; or

(B) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading.

(ii) In addition, when the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the commodities may be exported without an extension of the license, if in the judgment of the customs office, or the Office of Export Licensing, undue hardship would otherwise result.

(2) *Other shipments.* A shipment not coming within the above provisions may not be exported against an expiring license, unless the license is extended by the Office of Export Licensing.

(c) *Reshipment of undelivered shipments.* A shipment cleared under a validated export license may not be received by the ultimate consignee because the exporting carrier failed to deliver it. In such cases, the same, or an identical commodity, in the quantity or value shipped may be exported under the same license to the same consignee and destination, if satisfactory evidence of the original export and of the failure to deliver the shipment, together with a satisfactory explanation of the delivery failure, is submitted to the Office of Export Licensing. If a commodity is to be reexported to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current Export Administration regulations regarding the specific commodity and destination.

(d) *Records of validated license shipments*—(1) *Entries on reverse side of license.*[3] The exporter or his agent shall maintain complete records of all shipments made against each validated license by recording each shipment on the reverse side of the license document in accordance with the following instructions:

(i) *Quantity shipped.* Enter total quantity shipped in units shown on the license, including any amounts shipped under the tolerance provisions of § 786.7.

(ii) *Description of commodities.* Enter Export Control Commodity Number and an abbreviated description of the commodity as shown on the license. Where the license covers two or more commodities, indicate clearly which commodity(ies) is being shipped.

(iii) *Dollar value.* Enter total value of the commodities (selling price, or cost if not sold, including inland freight, insurance, and other costs to U.S. port of export, to the nearest whole dollar).

(iv) *Name of exporting carrier.* Enter name of vessel or airline on which shipment is exported. If other type of transportation is used, specify; e.g., truck, ferry, rail;

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[2] Provisions relating to the export clearance of technical data under a validated license are set forth in § 779.6 of this chapter.

[3] The requirement that shipments be recorded on the reverse side of a validated export license does not apply to exports made under a Project License (§ 773.2), a Distribution License, (§ 773.3), or a Service Supply License (§ 773.7).

(v) *Point of export or post office of mailing.* Enter name of the point from which the shipment leaves the United States or the post office where the shipment is mailed.

(vi) *Date of export.* Enter date the shipment leaves the United States (if exact date is not known, enter approximate date, and so indicate).

(vii) *Customs officer or postmaster.* Enter the initials of the person recording the shipment data.

(2) *Export clearance continuation sheet.* If the reverse side of the export license is filled before shipments are completed, other shipments shall be recorded on a continuation sheet conforming to the format of the license. Continuation sheets shall be affixed to the license and numbered consecutively, and the export license number shall be entered on the top of each sheet. Continuation sheets become part of the license and shall be retained with the license.

(3) *Retention of licenses.* Licenses issued by OEL shall be retained by the applicant, along with all applicable supporting documents and records of shipments, except as provided below.

(4) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends the license, the licensee shall return it immediately upon notification that the license has been revoked or suspended. The licensee shall complete the certification on the reverse of the license document and attach copies of any license amendments to the license, and return it to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. If the licensee fails to return a revoked or suspended license immediately upon notification, the Office of Export Enforcement may impose sanctions provided for in § 787.1 of the Export Administration Regulations.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0625-0051)

[37 FR 12222, June 21, 1972, as amended at 39 FR 39033, Nov. 5, 1974; 42 FR 18401, Apr. 7, 1977; 45 FR 65207, Oct. 2, 1980; 47 FR 5211, Feb. 4, 1982; 47 FR 15114, Apr. 8, 1982; 51 FR 30632, Aug. 28, 1986; 51 FR 46852, Dec. 29, 1986; 53 FR 22475, June 16, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 786.3 Shipper's export declaration.

(a) *Presentation requirement.* All copies of Shipper's Export Declarations that are required to be presented to a customs office shall be presented at the port of export.

(b) *Declaration as export control document.* Under the Export Administration Regulations a Shipper's Export Declaration is a statement declaring the existence of a validated export license or permission for an export under an applicable general license. Such document may be used only by the exporter or his duly authorized forwarding agent for the purpose of exporting, facilitating, or effecting the export of a commodity(ies) requiring a validated or general license under the Export Administration regulations issued pursuant to the Export Administration Act.

(c) *Limitation of effective period of declaration.* No declaration shall be used to export, or facilitate or effect an export, after the expiration of the applicable validated license or after the termination of the applicable general license, except as provided in §§ 772.9(d) and 786.2(b). The validity period of an export license includes any extension provided by any saving clause or regulation.

(d) *Who may submit declaration.* A declaration may be submitted to the customs office only by the exporter or his carrier or the duly authorized forwarding agent of the exporter. A carrier, not otherwise acting as a forwarding agent, may deliver an executed declaration to the customs office without specific authorization from the exporter.

(e) *Forwarding agent*—(1) *Definition of "forwarding agent."* For the purpose of this part, a "forwarding agent" means a person authorized by an exporter to perform for the exporter actual services which facilitate the export of the commodities or technical data described in the declaration. These services include, but are not limited to, preparing the declaration and clearing the shipment by submis-

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sion of documents to the customs officers or export control officers. A "forwarding agent" need not be a person regularly engaged in the freight forwarding business. A "forwarding agent" shall be designated by the exporter in writing in the power of attorney set forth on the declaration or in a general power of attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

(2) *Forwarding agent as true agent.* Unless the exporter states otherwise in the power of attorney or other written form, the forwarding agent named by the exporter shall be deemed the true agent of the exporter for export control and customs purposes. However, the power of attorney or other authorization designating a forwarding agent does not make such agent the sole and exclusive forwarding agent of the exporter for all exports. Where a forwarding agent is suggested by the foreign buyer in a transaction (rather than by the seller in the United States) a form of designation on the declaration which limits the authority granted to the particular transaction involved would be appropriate. The seller may, however, insist that the agent for the foreign buyer apply for the license. (See § 772.3(b)(1) of this chapter.)

(3) *Form of powers of attorney.* The sample form ("Power-of-Attorney—Designation of Forwarding Agent" (see Supplement S-17 for facsimile) fixes responsibility of the exporter for exports made through a forwarding agent. This suggested form conforms to usual business practice in establishing agency relationship, but its use is not mandatory. The exporter may use any written form of designation, provided it is subscribed and sworn to by a duly authorized officer or employee of the exporter, before a notary public, or other person authorized to administer oaths. Such authorization shall clearly indicate that the party named is authorized to represent the exporter for export control and customs purposes. The extent of the authority, as in the power of attorney, may be restricted with respect to time, country, commodity, specific license, or other matter. Such documents may also be used to designate one or more employees, or other persons, such as an export manager or agent, to in turn appoint as many forwarding agents as may be required.

(4) *Redelegation of agent's authority.* If a forwarding agent signs and swears to a declaration for clearance of an export through a port where he has no office, he shall furnish an authorization in writing to the person who will actually present the declaration to the customs office. He may also redelegate to another forwarding agent his authority to sign, swear to, and present declarations at such port: *Provided,* That the authorization from the exporter permits such redelegation or he obtains other written evidence of consent from the exporter. Proof of the authority of any person signing a power of attorney, or other authorization may be required. In general, however such proof will be required only when there is some reason to doubt the authority of the person involved.

(5) *Record and proof of agent's authority.* The power of attorney or other authorization from the exporter shall be retained on file in the forwarding agent's office while the authorization is in force and for a period of 2 years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent shall make his delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of § 787.13(f) of this chapter. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates his authority. (For further recordkeeping requirements see § 787.13 of this chapter.)

(f) *Number of copies required.* When a declaration is required, it shall be presented to the customs office at the port of export, or to the postmaster at the post office from which the shipment is mailed, in the number of copies specified below.

(1) *Exports by means other than mail.* Two copies of the declaration are required by the customs office at

the port of export, except (i) only one copy is required for shipments to Canada and shipments between the United States and its territories and possessions, or (ii) an additional copy may be required by paragraph (f)(3) of this section.

(2) *Mail shipments.* For a mail shipment, present one copy of the Declaration to the postmaster at the place of mailing when the shipment: (i) Is under a validated license, or (ii) is of a commercial nature and its value is more than $500. Present two copies when an additional copy is required by paragraph (f)(3) of this section.

(3) *Additional copies of Declaration.* The Office of Export Licensing may require additional copies of the Declaration for exports under a validated license that contain special requirements for additional documents or information. (See §§ 771.17(f)(2)(i), 773.2(f)(1), and paragraph (o) of this section.) Additional copies of the Declaration may also be required for commodities subject to the provisions of Part 777 of these regulations. For exports from the United States to foreign countries made via Canada an additional copy of the Declaration must be submitted to Canadian authorities. (See § 774.6.)

(g) *Statements on declaration.* Where a declaration is presented to a customs office or postmaster, the exporter represents that:

(1) All statements and information in the declaration have been furnished by him or on his behalf for the purpose of effecting an export under the Export Administration regulations;

(2) Export of the commodity(ies) described in the declaration is authorized under the general or validated export license therein identified;

(3) Statements contained in the declaration are identical in all respects with the contents of the validated license or the terms, provisions, and conditions of the applicable general license; and

(4) All other terms, provisions, and conditions of the Export Administration regulations applicable to the export have been met.

(h) *Commodities that may be listed on the same declaration*—(1) *General.* Except as described in paragraph (h)(2) of this section, commodities may be listed on the same Declaration provided that they are contained in one shipment on board a single carrier and are from the same exporter to the same consignee. Unless the commodities are being shipped in separate vehicles, as described in paragraph (h)(2) of this section, general license commodities and validated license commodities may be combined on the same Declaration. The applicable validated license number and/or general license symbol shall be listed in the designated space on the Declaration (see § 786.3(j)). An asterisk (*) shall be placed immediately to the left of the description of any general license commodity listed on a Declaration that combines validated and general license commodities.

(2) *Exception.* Separate Declarations are required for shipments by rail, truck, or other vehicle when more than one vehicle is used to make the shipment. This requirement may be waived by Customs Directors if a shipment is made under a single bill of lading or other loading document and all the commodities listed on the Declaration are cleared simultaneously.

(i) *Schedule B number and commodity description*—(1) *Schedule B number.* The seven-digit Schedule B number, as shown in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, shall be entered in the designated column of the declaration regardless of whether the shipment is moving under a validated or general license.

(2) *Commodity description for validated license shipment*—(i) *General.* The commodity description on the declaration for a shipment under a validated license shall be that shown on the related validated license. However, where part of the description on the license is underlined, only the underlined portions need be included on the declaration. The commodity description on the license will be stated in Commodity Control List terms, which may be inadequate to meet Census Bureau requirements. In this event, the commodity description on the declaration shall give enough additional detail to permit verification of

the Schedule B number (e.g., size, material, or degree of fabrication).

(ii) *Distinguishing characteristics or specifications.* If a commodity classification in Schedule B has instructions such as "specify by name," "state species," etc., that information shall be furnished in the column of the declaration provided for the commodity description. When a single Shipper's Export Declaration covers more than one item classifiable under a single classification carrying the "specify by name" or similar requirement, each item shall be entered separately in this column. However, if more than five items are involved, all classifiable under one Schedule B number, only the five items of greatest value in the classification need be shown separately. Separate quantities, values, and shipping weights for individual items are not required in either case.

(3) *Commodity description for general license shipments.* The commodity description on the declaration for a shipment under a general license shall be in sufficient detail to permit verification of the seven-digit Schedule B number entered on the declaration.

(j) *Validated license number or general license designation*—(1) *Exports under a validated license.* The license number, the Export Control Commodity Number and the commodity description, shall be shown in the designated spaces of a Declaration covering an export under a validated license. When an export is made prior to receipt of a license, as authorized by 770.14(f), the symbol "770.14" shall be entered immediately after the license number.

(2) *Exports under a general license.* In addition to the commodity description, the general license designation shall be shown in the appropriate column of each Declaration covering a shipment under a general license. If the commodity is to be exported under the provisions of General License *GLV*, the Export Control Commodity Number shall also be shown in the designated space.

(k) *Optional ports of unlading*—(1) *Applicability.* If, prior to the departure of the exporting carrier, the exporter does not know at what port the shipment will be unloaded, he may designate optional ports of unlading on the declaration and bill of lading or air waybill in accordance with this paragraph. In no case does this procedure apply to any shipment destined directly or indirectly to Country Group S, Y, or Z. (For shipments to other destinations via Hong Kong, see § 770.8 of this chapter.)

(2) *General license shipments.* (i) For exports under General License G-DEST, if the exporter does not know which of several countries in Country Groups T, V, and W is the country of ultimate destination, he may name optional ports of unlading in one or more of these countries.

(ii) When an export under any general license is shipped in transit through a country other than the country of ultimate destination, the exporter may designate optional ports of unlading in one or more countries, together with the name and address of the intermediate consignee in each country designated.

(iii) Optional ports of unlading, in all cases, shall be in a country to which the commodity or technical data may be shipped directly from the United States under the same or another applicable general license.

(3) *Validated license shipments.* For exports under a validated license, optional ports of unlading are restricted to the country of ultimate destination, unless the export license or amendment designates intermediate consignees in one or more other countries. In the latter case, the optional ports of unlading must be designated as optional intransit points on the declaration and bill of lading or air waybill.

(4) *Correcting the declaration.* As soon as the exporter, his forwarding agent or his carrier determines at which port the shipment is to be unloaded (whether in the country of ultimate destination or in a country of transit) such person shall correct the Shipper's Export Declaration to show the specific port of unloading and the name and address of the intermediate consignee to whom delivery is to be made. An intermediate consignee must be shown if the port of unloading is located in a country other than the country of destination. If the export is unloaded at more than one port, the

quantity and value unloaded at each port and the name and address of each intermediate consignee should be given. The procedures for correcting and filing declarations are set forth in paragraph (q) of this section.

(l) [Reserved]

(m) *Signature on declaration.* The signature on the declaration of the person making the declaration shall be that of the exporter or the forwarding agent named in the declaration, or a duly authorized officer or employee of either. In general, it will be deemed that the requisite authority rests with employees who, by their official titles, are apparently vested with power to deal with exports; such as export managers or such corporate officers as the president, vice president, treasurer, and secretary of a corporation, any partner of a partnership, and any responsible head of any other form of private or quasi-governmental organization, and assistance officers. The signature of such person, whether or not that of the exporter or employee, constitutes a representation by the exporter that all statements and information in the declaration are true and correct. In addition, if the signature is that of the forwarding agent, or his duly authorized officer or employee, such signature constitutes a like representation by the forwarding agent.

(n) *Attachment to declaration.* Additional copies of the declaration or copies of the continuation sheet form may be used where more space is required. In such cases, only one declaration form need be signed. The additional sheets shall be numbered in sequence and securely attached to the executed declaration form; and the following statement shall be inserted between the column provided for marks and numbers of the shipment and the column provided for its value:

This declaration consists of this sheet and ———— continuation sheets.

No portion of any form attached as a continuation sheet shall be torn off or removed.

(o) *Special requirements for additional information and documents.* (1) A validated license may bear on its face a requirement for specified documents (or information) in addition to that furnished when the application was filed. The licensee shall furnish these to—Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044, as follows:

(i) Prepare one copy of the declaration in addition to the number of copies otherwise required.

(ii) Enter the required additional information in the space between the column provided for marks and numbers of the shipment and the column provided for its value on all copies of the declaration.

(iii) Unless otherwise specified on the license, attach the required documents (either original or certified copy) to the extra copy of the declaration.

(2) All such statements and documents will be deemed to constitute representations of material facts within the purview of the regulations prohibiting the making of false representations to the Office of Export Licensing in any export control matter (see § 787.5(b) of this chapter).

(p) *Declaration for shipments moving in transit*—(1) *Applicability.* The Shipper's Export Declaration for In-transit Goods, Commerce Form 7513,[4] should be used for the following types of transactions:

(i) Commodities shipped by vessel in transit through the United States from one foreign country or area to another, including merchandise destined from one foreign country to another and transshipped in U.S. ports; or

(ii) Foreign merchandise exported from a General Order Warehouse.

Shipments in bond transiting the United States by means of any carrier other than a vessel may be cleared for export without presenting a Form 7513, unless a validated license is required for the export.

(2) Exports from Foreign Trade Zones. Commerce Form 7513 is not acceptable for any exports from Foreign Trade Zones. Such shipments require the filing of the Shipper's Export Dec-

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[4] Form 7513 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and from local customs offices.

laration (Form 7525-V), with the applicable zone number reported on the Document.

(3) *Additional information.* The following additional information shall be entered on a Shipper's Export Declaration for In-transit Goods:

(i) The name and address of the intermediate consignee in a foreign destination, if any, shall be shown below the description of the commodities;

(ii) Underneath the name and address of the intermediate consignee, one of the following statements shall be made, whichever is appropriate:

(A) For intransit shipments of foreign-origin merchandise (for definition of "foreign origin," see § 771.4(a) of this chapter):

The merchandise described herein is of foreign origin.

(B) For intransit shipments of domestic (U.S.) merchandise:

The merchandise described herein is of the growth, production, or manufacture of the United States.

(C) For intransit shipments of commodities of U.S. origin excepted under § 771.4(a)(2) of this chapter:

The merchandise described herein is of the growth, production, or manufacture of the United States, but comes within the exception granted by § 771.4(a)(2) of this chapter of the Export Administration Regulations.

(iii) The commodities shall be described in terms of Schedule B, including the appropriate Schedule B number.

(q) *Correction, cancellation, addition or amendment of information on Declaration*—(1) *Methods of changing declarations.* Exporters (or their agents) shall report corrections, cancellations, additions or amendments to information reported on Shipper's Export Declarations to the Customs Directors at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need for such changes is determined. Changes may be made directly on the originally filed Shipper's Export Declaration if the originally filed Declaration has not already been mailed to the Bureau of the Census. If the originally filed Shipper's Export Declaration has already been mailed to the Bureau of the Census, a photocopy, carbon, or other legible copy of the originally filed Shipper's Export Declaration, on which the incorrect data are neatly lined out and the corrected data entered, shall be promptly filed with the Customs Director at the port of exportation (or, in the case of mail shipments, with the Postmaster at the post office where the shipment was mailed). Any changes to the Declaration should be identified as such on the face of the Declaration. If the original Declaration was required by § 786.3(o)(1) to be filed with the Office of Export Enforcement, a copy of the changed Declaration should be sent to—Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044 with the words "Correction Copy" conspicuously shown in the upper right portion of the form.

(2) *Responsibility.* Nothing herein shall relieve any person or firm making changes on the Declaration from responsibility for any such changes. Acceptance of a changed declaration by the Customs office does not imply approval of any act involved in the shipment or the truth or accuracy of the information provided.

(r) *Summary monthly reports in lieu of individual shipper's Export Declarations*—(1) *Scope.* An alternate procedure for reporting exports to Canada and to Country Groups Q, T, V, W and Y is established under which qualified exporters may be authorized to file at the end of each month typewritten or handwritten Shipper's Summary Export Declarations (Form 7525-M), or computer tapes compatible with equipment of the Bureau of the Census, punched cards, etc., in lieu of individual Shipper's Export Declarations. Detail of the procedure are set forth in § 30.39 of the Foreign Trade Statistics Regulations of the Bureau of the Census of this title. Exporters interested in the procedure should consult § 30.39 of this title ascertain qualifications, how to apply for the privilege of participating, how to file a monthly report after approval is given, and other pertinent facts. This paragraph contains only basic information about the procedure and specific requirements relating exclusively to export controls.

(2) *Certification required in application.* A request for the privilege of participating should be forwarded to—Foreign Trade Division, Bureau of the Census, Washington, DC 20233. A copy should be sent to—Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044. The request shall include a certification by the exporter as follows:

> I (We) certify that I (We) have established adequate internal procedures and safeguards to assure compliance with the requirements set forth in the U.S. Department of Commerce Export Administration Regulation and Foreign Trade Statistics Regulations. Among other things, these procedures and safeguards assure:
>
> (i) A proper determination as to whether a validated license is required for a particular export;
>
> (ii) Actual receipt of the validated license, if required, before the shipment is exported;
>
> (iii) Compliance with all the terms of the validated license or general license, as applicable;
>
> (iv) Return of validated licenses to the Office of Export Licensing, as provided in paragraph (r)(7) of this section;
>
> (v) Compliance with the destination control statement provisions of §§ 386.5 and 386.6;
>
> (vi) Compliance with the prohibition against export transactions that involved parties who have been denied U.S. export privileges; and
>
> (vii) Compliance with the recordkeeping requirements of § 787.13 of this chapter; and, in addition, I (we) agree that my (our) office records will be made available for inspection by the Bureau of the Census, the Office of Export Licensing, or the Bureau of Customs, upon request, to verify that a given shipment was properly included in a particular monthly report.

(3) *Exporter's agent.* Where the exporter intends to authorize a forwarding agent to file monthly reports on his behalf, the exporter's request shall include the name and address of each such forwarding agent.

(4) *Authorization by Census to use monthly reporting procedure.* Authorization to file monthly reports in lieu of individual declarations under this procedure will be granted by the Bureau of the Census with the concurrence of the Office of Export Licensing.

(5) *Validated license.* Persons or firms authorized to file monthly reports in lieu of individual declarations shall sign the license on the reverse side, as provided in § 786.2(d), fill in the information required by paragraph (r)(6) of this section, and hold it until time to return it to the Office of Export Licensing as required by paragraph (r)(7) of this section.

(6) *Recording shipment on the reverse side of Export License (Form FC-628).* The licensee or his forwarding agent shall record each shipment on the reversed side of the Export License (see Supplement S-3, page 2, for facsimile), as explained in § 786.2(d), and include a statement that shipments were made under the "Monthly Shipper's Export Declaration procedure."

(7) *Return of licenses.* Validated export licenses shall be returned to the Office of Export Licensing promptly after shipment is completed, when no further shipments are to be made, or when the license has been revoked or canceled, or has expired.

(8) *Export clearance*—(i) *Destination control statement.* In addition to his responsibility for assuring that the proper destination control statement is placed on the commercial invoice as required by § 786.6, the exporter or his forwarding agent is responsible for assuring that the carrier places the proper destination control statement on the related bill of lading or air waybill.

(ii) *Detention and examination.* Shipments being reported under this procedure are subject to detention and examination, as provided in § 786.8, whenever the customs office or postmaster deems such action necessary to assure compliance with the Export Administration Regulations.

(9) *Revocation of authorization.* An authorization to file monthly reports in lieu of individual declarations, granted under § 30.39 of the Foreign Trade Statistics Regulations of this title and this paragraph, may be revoked, suspended, or revised at any time.

(10) *Effect of other provisions.* Insofar as consistent with the provisions of this paragraph that relate specifically to filing monthly reports in lieu of in-

dividual declarations, the other provisions of this part shall apply to exports reported under this procedure.

[37 FR 12222, June 21, 1972. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 786.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 786.4 Conformity of documents for validated license shipments.

(a) *Applicability.* The following rules of conformity apply to any shipment under a validated export license, except those under a consolidated "master" air waybill (other than airmail or air parcel post). However, these rules do apply to any individual air waybill issued by a consolidator (indirect carrier) for an export included in a consolidated shipment and to any air waybill issued by a carrier or other person covering an export not included in a consolidated shipment.

(b) *Rules of conformity*—(1) *General.* The validated export license, the declaration, and the outbound bill of lading (including a railroad through bill of lading) covering the same export shipment must be consistent with one another. The bill of lading, whether in negotiable or nonnegotiable form, is not consistent if:

(i) It does not provide for delivery of the shipment (cargo) at a port located in the country of either the ultimate or intermediate consignee named in the declaration.

(ii) It contains any indication that the shipment is in transit to a country of ultimate destination different from that named in the declaration, if there is reason to believe that the shipment is not for consumption in the country of ultimate destination. For example, it would be inconsistent to consign such a shipment to the ultimate destination with a qualifying phrase indicating the shipment is "in transit" at that destination, or to consign the shipment to a free zone or free port.

(iii) It names as shipper any person other than the licensee or his duly authorized forwarding agent. Where shipments from more than one licensee are consolidated on a single bill of lading, the shipper named on the bill of lading must also appear as the authorized forwarding agent for each exporter on each declaration.

(iv) The name and address of the ultimate consignee are not shown either in the space provided for "consignee" or in the body of the bill of lading under the caption "ultimate consignee and notify party" or, in the case of the air waybill, under the caption "also notify." However, where shipments to more than one ultimate consignee are consolidated on one bill of lading and not all are shown in the body of the bill of lading, the name of the intermediate consignee (customs broker or consolidator's agent in the foreign country) who will receive and distribute the commodities to the ultimate consignees must appear on the bill of lading, the validated license(s), and the declaration(s). Where the name of the intermediate consignee in such a consolidated shipment differs from that shown on each validated license or does not appear on each license, an amendment of the license(s) is necessary even though the intermediate consignee is in the same country as the ultimate consignees.

(2) *Negotiable bill of lading.* For a negotiable bill of lading ("order" bill of lading), the bill of lading is deemed consistent only if the consignee or order party named therein is also named in the declaration. An "order" bill of lading may consign the commodities or technical data covered thereby to the order of the shipper, to the order of an intermediate consignee (whether bank, foreign freight forwarder, or other intermediary), or to the order of the purchaser (if not the same as the ultimate consignee). An "order" bill of lading issued in any of these forms constitutes a representation by the shipper that: (i) The commodities or technical data covered by the validated license, declaration, and bill of lading are ultimately destined to such ultimate consignee; (ii) the document has not been used for the purpose of evading the terms and conditions of the validated license; and (iii) pursuant to the contract of carriage, the commodities or technical data will be delivered at a port located in the country of the ultimate consignee or of the intermediate consignee named in the declaration.

(3) *Commodity description.* On the bill of lading the commodities or technical data may be described in terms of the freight tariff classification or other type of classification, but may not be inconsistent with the description shown in the declaration and validated export license. On the declaration the commodity description shall include the same commodity description as shown on the related validated license, and, in addition, it shall include more detailed information where required by the Census Bureau.

(4) *Commodity numbers.* The one-to-five digit Export Control Commodity Number shown on the export license shall be the same as the initial digits of the seven-digit Schedule B number entered on the declaration.

(5) *Carrier's manifest.* If the carrier's outward foreign manifest filed with the U.S. customs office contains the names of shippers or consignees, these names must not be inconsistent with the names shown on the bill of lading or the declaration.

(c) *Compliance.* No carrier shall issue, and no licensee, shipper, consignor, exporter, or consignee, or their agents, or any other person, shall prepare or procure a bill of lading that is contrary to the provisions of this section. Customs offices are authorized to require any document or to use any other appropriate methods to insure compliance with these provisions.

§ 786.5 General destination control requirements.

(a) *Applicability to validated license shipments.* The following provisions apply to all shipments under a validated license:

(1) *Destination on bill of lading or air waybill.* No carrier (nor any other person on behalf of any carrier) shall issue a bill of lading or air waybill providing for delivery of cargo at any foreign port not in the country of (i) the ultimate consignee, or (ii) the intermediate consignee, named in the Shipper's Export Declaration.

(2) *Delivery of cargo.* No carrier shall deliver cargo to any other country at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from the Office of Export Licensing to the carrier or its agent.

(3) *Diversion.* No shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person, shall, without prior written authorization from the Office of Export Licensing to the carrier or its agent:

(i) Divert any cargo to any country of ultimate destination other than that named in the declaration or in the bill of lading or air waybill as described in § 786.6; or

(ii) Request or demand that any carrier or its agent divert cargo from the country of ultimate destination named in any such document. In addition, no agent of any carrier shall instruct or authorize the master of the vessel to divert any cargo to any other country of ultimate destination without prior written authorization from the Office of Export Licensing. (See § 772.11(f)(7) for shipments unloaded prior to arrival at the country of ultimate destination, that do not require the naming of an intermediate consignee.)

(4) *Optional ports on bill of lading or air waybill.* No carrier shall issue a bill of lading or air waybill providing for delivery of cargo to the ultimate consignee named in the declaration at optional ports, where one of such optional ports is not in the country of ultimate destination named on the license or declaration, without prior written authorization from the Office of Export Licensing.

However, where the declaration provides for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier may issue a bill of lading or air waybill providing for delivery at such optional ports.

(b) *Unloading of cargo at a Port in other than intermediate or ultimate country of destination*—(1) *Reasons beyond carrier's control.* Nothing contained in the Export Administration Regulations shall be deemed to prohibit a carrier from unloading cargo at a port outside the intermediate or ultimate country of destination shown on the declaration where, for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as act of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled loading.* Whenever cargo is unloaded at a port in any country other than the intermediate or ultimate destination shown on the declaration, except where the cargo may be exported under a general license directly from the United States to such country:

(i) The carrier shall, within 10 days after date of unloading, report the facts to the nearest American Consul and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent shall send a copy of the report to the Office of Export Licensing. This report shall consist of:

(A) A copy of the manifest of such diverted cargo;

(B) A statement of the place of unloading; and

(C) The name and address of the person in whose custody the commodities or technical data were delivered.

(ii) The exporter of such cargo shall, within 10 days of receiving notice of such diversion from the Office of Export Licensing, notify the Office of Exports Licensing of the proposed disposition of the commodities or technical data.

(iii) No person, including the exporter, license, consignee, carrier, or any person acting on the carrier's behalf, shall take any steps to effect delivery or entry of the commodities or technical data into the commerce of the country where unloaded without prior approval of the Office of Export Licensing. The carrier shall take steps to assure that such commodities or technical data are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the declaration without such prior approval.

[37 FR 12222, June 21, 1972, as amended at 45 FR 49542, July 25, 1980; 51 FR 30632, Aug. 28, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 786.6 Destination control statements.

(a) *Requirement for destination control statement.* When required by this paragraph, an appropriate destination control statement is required to be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering an export from the United States. The same statement shall appear on all copies of all such shipping documents that apply to the same shipment. At the discretion of the exporter or his agent, a destination control statement may be entered on the shipping documents for exports for which no destination control statement is required.

(1) *Exports to all destinations except the Republic of South Africa.* For exports to a destination other than the Republic of South Africa, one of the three destination control statements described in § 786.6 (c) and (d) is required for an export under:

(i) A validated license;

(ii) General License GLV, GTF-US, GTE, GLR, GFW, G-COM, G-COCOM, G-TEMP, or G-CEU.

(iii) General License *G-DEST* if the commodities are under validated license control to any Group Y destination and the value of the shipment exceeds $250.

(2) *Exports to the Republic of South Africa.* The following destination control statement is required for all shipments to the Republic of South Africa made under a validated license or under general license G-DEST, GLV, GTF-US, G-NNR, GLR, GFW, and G-TEMP:

These (commodities) (technical data) licensed by the United States for (Republic of South Africa). Diversion contrary to U.S. law prohibited. Resale to or delivery, directly or indirectly, to or for use by or for police or military entities prohibited.

(b) [Reserved]

(c) *Statement to be used.* Except for exports to the Republic of South Africa, one of the three destination control statements set forth in paragraph (d) below may be used, as follows:

(1) [Reserved]

(2) *General license shipments.* For a shipment under any general license, except General Licenses G-COCOM and GCT, any of the three destination control statements in paragraph (d) of this section may be used. For shipments under General Licenses G-COCOM or GCT exporters must use Statement No. 1 or 2.

(3) *Validated license shipments.* For a shipment under a validated license, either Statement 1 or Statement 2 shall be used. Statement 1 should be used where the license shows that the commodities or technical data are licensed for export to the country of ultimate destination only. Statement 2 should be used where the license specifically shows that the commodities or technical data may be distributed or resold to other specified countries.

(d) *Statements*—(1) *Statement 1.*

> These (commodities) (technical data) licensed by the United States for ultimate destination (name of country). Diversion contrary to U.S. law prohibited.

The country of ultimate destination [5] named on the declaration, and if applicable on the validated license, shall be entered in the blank country space.

(2) *Statement 2.*

> These (commodities) (technical data) licensed by the United States for ultimate destination (name of country) and for distribution or resale in (name of country(ies)). Diversion contrary to U.S. law prohibited.

The country spaces shall be completed as follows:

(i) *General license shipments.* For a shipment under any general license:

(A) The country of ultimate destination named on the declaration shall be entered in the first space; and

(B) The following shall be entered in the last space:

> "any destination except the Soviet Bloc,[6] Laos, Libya, North Korea, Vietnam, Cambodia, or Cuba, unless otherwise authorized by the United States."

If the export requires a validated license for Poland, Hungary or Romania, these countries shall be included. If the export does *not* require a validated license for a country on the prohibited list, that country may be deleted.

(ii) *Validated license shipments.* For a validated license shipment:

(A) The country of ultimate destination named on the license shall be entered in the first space; and

(B) The country(ies) shown on the license as approved for distribution or resale shall be entered in the last space. If no such country is shown on the license, the word "none" shall be entered in the last space.

(3) *Statement 3.*

> "United States law prohibits disposition of these commodities to the Soviet Bloc,[6] Laos, Libya, North Korea, Vietnam, Kampuchea, or Cuba unless otherwise authorized by the United States."

Statement 3 permits distribution or resale to any country in the world other than those specifically excepted in the statement. If an export to an excepted country does *not* require a validated license, that country may be deleted. If an export to Poland, Hungary, or Romania requires a validated license, these countries should be added to the prohibited destinations listed.

(e) *Preprinted statement.* A destination control statement may be preprinted on bills of lading, air waybills, or commercial invoices. But in this case, only one of the three destination control statements above may be shown on any one of these documents.

(f) *Permissive reexports.* If an exporter or his agent uses a more restrictive destination control statement than is necessary, the reexport provisions of § 774.2 of this chapter may nevertheless authorize reexport to certain destinations. Where reexport is authorized, the exporter may so advise his foreign importer without obtaining further authorization from the Office of Export Licensing. In all other instances, specific authorization shall be obtained from the Office of Export Licensing (see § 774.3 of this chapter).

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[5] On bills of lading, air waybills, and invoices, preprinted destination control statements may be used in which the country of ultimate destination is clearly and unambiguously indicated by reference to a designated entry elsewhere on the same document.

[6] As defined in the destination control statement, the term "Soviet Bloc" means all countries in Country Group Y, except Laos. Poland, Hungary, Romania, and Yugoslavia are not Y countries.

(g) *Responsibility for use of statement*—(1) *Primary responsibility*—(i) *General.* The exporter has the primary responsibility for assuring entry of an appropriate destination control statement on the commercial invoice, regardless of whether he prepares this document. If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes this document, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the document. The carrier, as the party that issues the bill of lading or air waybill, has the primary responsibility for assuring that the same statement appearing on the corresponding invoice also appears on the bill of lading or air waybill. Any other party who prepares a bill of lading or air waybill is also responsible for assuring that an appropriate statement is placed on the document.

(ii) *Appropriate statement.* For a general license shipment, an understanding must be reached between the exporter and forwarder, carrier, or other agent as to which statement shall be used. For a validated license shipment, if a forwarder, carrier, or other agent does not have a copy of the commercial invoice, he can determine the appropriate destination control statement from the export license.

(2) *Statement on bill of lading or air waybill*—(i) *General.* No carrier shall issue (and no exporter, licensee, shipper, consignor, consignee, agent, or any other person, shall prepare or procure) a bill of lading covering an export for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of such bill of lading (including all nonnegotiable and office copies) contain the same statement in clearly legible form.

(ii) *Air waybill.* In the case of shipments by air (other than airmail or air parcel post), this requirement applies to any air waybill, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, these provisions do not apply to a "master" air waybill issued by a carrier to cover a consolidated shipment.

(iii) *More than one statement applicable to bill of lading.* If one bill of lading is issued for two or more individual shipments to which different destination control statements apply, the applicable statement shall be entered beneath each shipment or group of shipments. However, if the bill of lading shows a single freight tariff classification to describe several commodities which require the use of more than one statement, and it is impracticable to separate the commodities on the bill of lading, the most restrictive statement applicable to any of the groups shall be used. The commercial invoice should, nevertheless, segregate the commodity groups and show the proper statement for each group.

(3) *Statement on commercial invoice*—(i) *General.* No licensee, shipper, consignor, exporter, agent, or any other person shall prepare or issue a commercial invoice for a shipment for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of the invoice(s) contain the same destination control statement in clearly legible form. This statement shall be an applicable statement as set forth in paragraph (d) of this section.

(ii) *Distribution of copies of statement.* Whenever a commercial invoice is issued containing the prescribed destination control statement, the shipper or other person issuing such invoice shall promptly send copies to:

(A) The ultimate consignee and the purchaser named in the declaration;

(B) The intermediate consignee; and

(C) Any other persons named in the invoice who are located in a foreign country. Nothing contained herein shall be construed to limit the persons or classes of persons to whom such invoices, bills of lading or air waybills are usually and customarily sent in the course of export trade. The shipper or other person issuing the commercial invoice may omit all reference to price or sales commission from the copy of the invoice sent to any of the above-named persons: *Provided,* Such invoice otherwise adequately identifies the shipment. As an alternative, in lieu of a copy of the commercial invoice, such person may send a copy of the bill of lading or air waybill containing the destination control statement.

(iii) *Commercial invoices not containing a statement.* If the forwarding agent receives from the exporter a copy of a commercial invoice without the correct destination control statement, he shall:

(A) Notify the exporter in writing;

(B) Request written assurance from the exporter that (*1*) the destination control statement has been properly entered on all other copies of the commercial invoice, and (*2*) any person who received an invoice without the statement has been informed in writing of the restrictions set forth in the statement;

(C) Either (*1*) enter the appropriate statement on his copy of the invoice, or (*2*) return it to the exporter for proper completion; and

(D) Keep and make available for inspection, in accordance with § 787.13 of this chapter, a copy of his notification to the exporter and the original of the exporter's assurance to him. (For further recordkeeping requirements, see § 787.13 of this chapter.)

(h) *Release of custody by carrier.* No carrier shall release custody of a shipment covered by the provisions of this section to any party without surrender by that party, to the carrier, of a copy of the bill of lading or air waybill bearing on its face the applicable destination control statement, unless either:

(1) Simultaneously with the release, the carrier delivers to such party a written copy of the destination control statement, contained in the carrier's copy of the bill of lading or air waybill for the shipment. The written copy shall identify the shipment by bill of lading or air waybill number, name of carrier, voyage or flight number, date, and port of arrival. The carrier shall also secure either a signed receipted copy of the written statement or other equivalent written evidence that the statement has been delivered by the carrier; or,

(2) The regulations of the importing country require the carrier to deliver the commodities directly into the physical possession and control of customs or other government agency for delivery to the consignee or his agent. In this case, the carrier need not give to, or receive from, the customs or other government agency, or the consignee or his agent, any document bearing the destination control statement.

(i) *Notice and prohibition against diversion*—(1) *Conduct after receiving notice.* After receiving an invoice, bill of lading, air waybill, or any other document containing notice of the prohibition against diversion set forth in a destination control statement, or after receiving oral notice of such prohibition, no person so notified including the ultimate consignee, intermediate consignee, or onforwarding carrier shall divert, transship, or reexport (or cause to be diverted, transshipped, or reexported) any shipment described in the written or oral notice to any country not authorized in such notice.

(2) *Proof of notice.* In any administrative compliance proceeding brought by the Office of Export Licensing, evidence of the sending of such invoice, bill of lading, air waybill, or other form of notice of the prohibition against diversion to any person, shall constitute prima facie proof of that person's receipt thereof. This shall also constitute notice that the commodities have been licensed for a particular country of ultimate destination and may not be lawfully diverted to any other country. In addition, proof of the sending of such notice to the intermediate consignee shall be deemed notification of such prohibition to the ultimate consignee and purchaser.

(j) *Effect of foreign laws.* Reexport authority contained in a destination control statement does not relieve any person from complying with foreign laws. (See § 774.9 of this chapter.)

[37 FR 12222, June 21, 1972. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 786.6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 786.7 Shipping tolerance.

A shipping tolerance is sometimes allowed on the unshipped balance of a commodity or on the total dollar value as shown on the export license, depending on whether the commodities are licensed in terms of dollar value, in terms of "number" of units, or in terms of weight or measure. Such tolerances apply *only* to the "Unit" specified in the applicable entry of the Commodity Control List; they do *not* apply to other units of quantity or measure that may appear on the validated license.

(a) *Commodity licensed by dollar value.* There is no shipping tolerance on commodities licensed by dollar value. When the "Unit" paragraph of a CCL entry reads "Report in '$ value'.", commodities covered by that entry are licensed in terms of dollar value only, and the dollar value may not be exceeded—for example, see ECCN 1510A.

(b) *Commodities licensed by number of units.* When the "Unit" paragraph of a CCL entry reads "Report in 'number'.", commodities covered by that entry are licensed in terms of the number of units—for example, see ECCN 1505A. There is no shipping tolerance on an increase in the number of units; however, there *is* a shipping tolerance of up to 25% of the dollar value for those commodities. This tolerance is allowed against the original total dollar value shown on the license.

(c) *Commodities licensed by weight or measure.* (1) When the specific unit of quantity given in the "Unit" paragraph of a CCL entry is in "lbs.", "sq. ft.", or another unit of weight or measure,—for example, ECCNs 1702A or 1754A—commodities covered by that entry have a shipping tolerance of 10% on the *unshipped* balance of the licensed weight or measure, *unless*—

(i) There is a specific limitation on the tolerance set forth on the face of the validated license, or

(ii) A smaller tolerance has been established for commodities under short supply control, *i.e.*, as listed in a Supplement to Part 777.

(2) In addition to the 10% tolerance on the unshipped balance, commodities licensed by weight or measure also have a 25% tolerance on the *total* dollar value shown on the license.

(d) *Tolerance inapplicable after total shipment.* When the quantity (or total price, if applicable) stated on the license has been shipped, no additional tolerance is authorized and no further shipment may be made under that license.

(e) *Examples of shipping tolerances.* (1) A validated license authorizes the export of 100,000 pounds of a commodity covered by entry 1746A on the Commodity Control List, the total cost of which is $1,000,000—

(i) If one shipment is made, the quantity that may be exported may not exceed 110,000 pounds (10% tolerance on the unshipped balance), and the total cost of that one shipment may not exceed $1,250,000—

$1,000,000	(the total value shown on the license)
+250,000	(25% of the total value shown on the license)
$1,250,000	

(ii) If the first shipment is for 40,000 pounds, the second shipment may not exceed 10% of the unshipped balance of 60,000 pounds, *i.e.*, 66,000 pounds and the total cost of the second shipment shall not exceed $850,000—

$600,000	(the value of the unshipped balance of 60,000 pounds)
+250,000	(25% of the original total value shown on the license)
$850,000	

(iii) If the first shipment is for 40,000 pounds and the second shipment is for 20,000 pounds, the third shipment may not exceed 10% of the unshipped balance of 40,000 pounds *i.e.*, 44,000 pounds, and the total cost of the third shipment shall not exceed $650,000—

$400,000	(the value of the unshipped balance of 40,000 pounds)
+250,000	25% of the original total value on the license)
$650,000	

(2) A validated license authorizes the export of certain commodities covered by entry 1485A on the Commodity Control List, the total cost of which is $5,000,000: there is no shipping tolerance on any export of commodities covered by 1485A because such com-

modities are licensed in terms of dollar value only (see the "Unit" paragraph of that CCL entry).

(3) A validated license authorizes the export of 10 pieces of equipment covered by entry 1110A with a total value of $10,000,000 and the export of parts and accessories covered by that same entry valued at $1,000,000—

(i) If one shipment is made, the quantity of equipment that may be exported may not exceed 10 pieces of equipment because there is no shipping tolerance on the "number" of units. That one shipment of equipment may not exceed $12,500,000—

$10,000,000	(the total value shown on the license)
+2,500,000	(25% of the total value shown on the license)
$12,500,000	

If the one shipment includes parts and accessories, those parts and accessories may not exceed $1,000,000 because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(ii) If the first shipment is for 4 pieces of equipment valued at $4,000,000, the second shipment may not exceed 6 pieces of equipment (no tolerance on "number") valued at no more than $8,500,000–

$6,000,000	(the value of the unshipped 6 pieces)
+2,500,000	(25% of the original total value shown on the license)
$8,500,000	

If the first shipment includes $300,000 of parts and accessories, the second shipment may not exceed $700,000 of parts and accessories because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(iii) If the first shipment is for 4 pieces of equipment valued at $4,000,000 and the second shipment is for 3 pieces of equipment valued at $3,000,000, the third shipment may not exceed 3 pieces of equipment (no tolerance on "number") valued at no more than $5,500,000—

$3,000,000	(the value of the unshipped 3 pieces)
+2,500,000	(25% of the original total value shown on the license
$5,500,000	

If the first shipment includes $300,000 of parts and accessories and the second shipment includes another $300,000, the third shipment may not exceed $400,000 because there is no shipping tolerance on commodities licensed in terms of dollar value.

(f) *Amending export licenses.* If the increase in the dollar value, number, weight or other measure of the shipped commodities exceeds the allowable tolerances, see § 772.11 on how to amend an export license.

[52 FR 664, Jan. 8, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 786.8 Authority of customs offices and postmasters in clearing shipments.

(a) *Delegation of authority to customs offices and postmasters.* Customs offices and postmasters, including all customs and post office officials, are authorized and directed to take appropriate action to assure observance of the provisions of the Export Administration Regulations and of general and validated licenses issued thereunder. This includes, but is not limited to inspection of commodities and technical data being exported or about to be exported. The functions delegated to customs offices and postmasters by this paragraph may also be carried out by officials of the Office of Export Enforcement.

(b) *Types of actions which may be taken by customs offices.* The following types of actions, among others, are authorized to be taken by customs offices:

(1) *Examination of commodities*—(i) *Purpose of examination.* All commodities and technical data declared for export are subject to examination by customs officials for the purpose of verifying the commodity or technical data specified in the Shipper's Export Declaration, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to exports under either a general or a validated export license

and also to exports to Canada. This examination may include, but is not limited to, commodity identification, technical appraisal (analysis), or both.

(ii) *Place of examination.* Examination shall be made at the place of lading or where customs officials are stationed for that purpose.

(iii) *Technical identification.* Where, in the judgment of the customs office, the commodity or technical data cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis. The shipment will not be delayed after sampling for completion of the analysis.

(A) *Obtaining samples.* The sample will be obtained by the customs official in accordance with the provisions for sampling imported merchandise. The size of the sample shall be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or his agent) and the ultimate consignee will be notified by letter showing the port of export, date of sampling, export license number (if any), Shipper's Export Declaration number, quantity of sample taken, description of commodity, marks and packing case numbers, and manufacturer's number for the commodity. The original of the letter will be sent to the exporter or his agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the customs office procedure for imported commodities.

(2) *Inspection of documents*—(i) *General.* The customs office is authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents; as well as furnish other information bearing upon a particular shipment intended for export or removal from the United States and the identity and relationships of all participants therein.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) the customs office is authorized to require the exporter to produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* The customs office is authorized to question the owner or operator of an exporting carrier and his agent(s), as well as the exporter and his agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* The customs office is authorized to prevent the lading of commodities or technical data on an exporting carrier whenever the customs office has reasonable cause to believe that the export or removal from the United States is contrary to the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The customs office is authorized to inspect and search any exporting carrier at any time to determine whether commodities or technical data are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations.

(6) *Seizure and detention.* The customs office is authorized, under Title 22 of the United States Code, section 401, *et seq.*, to seize and detain any commodities or technical data whenever an attempt is made to export them in violation of the Export Administration Regulations, or whenever it knows or has probable cause to believe that commodities or technical data are intended to be, are being, or have been exported in violation of the Export Administration regulations. Seized commodities or technical data are subject to forfeiture. In addition to the authority of the customs office to

seize and detain commodities or technical data, both customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the Declaration or for physical examination of the commodities or technical data, whenever such action is deemed to be necessary to assure compliance with the Export Administration regulations.

(7) *Preventing departure of carrier.* The customs office is authorized under Title 22 of the United States Code, section 401, et seq., to seize and detain, either before or after clearance, any vessel or vehicle or air carrier which has been or is being used in exporting or attempting to export any commodity or technical data intended to be, being, or having been exported in violation of the Export Administration regulations.

(8) *Ordering the unloading.* The customs office is authorized to unload, or to order the unloading of commodities or technical data from any exporting carrier, whenever the customs office has reasonable cause to believe such commodities or technical data are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations.

(9) *Ordering the return of commodities.* If, after notice that an inspection of a shipment is to be made, a carrier departs without affording the customs office or Office of Export Licensing personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and his agent(s) may be ordered to return commodities or technical data exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Bureau of Customs is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

[37 FR 12222, June 21, 1972, as amended at 40 FR 23[illegible]04, June 4, 1975; 48 FR 17582, Apr. 25, 1983; 51 FR 12840, Apr. 16, 1986; 51 FR 30632, Aug. 28, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 786.9 Return or unloading of cargo at direction of U.S. Department of Commerce.

(a) *Exporting carrier.* As used in this section, the term "exporting carrier" includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *Ordering return or unloading of shipment.* Where there are reasonable grounds to believe that a violation of the Export Administration regulations has occurred or will occur with respect to a particular export from the United States, the Office of Export Licensing or any U.S. customs officer may order any person in possession or control of such shipment, including the exporting carrier, to return or unload the shipment. Such person shall, as ordered, either:

(1) Return the shipment to the United States or cause it to be returned, or (2) unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of the Office of Export Licensing. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier shall be sufficient notice of the order to the exporting carrier.

(c) *Requirements regarding shipment to be unloaded.* The provisions of § 786.5(b), relating to reporting, notification to the Office of Export Licensing, and the prohibition against unauthorized delivery or entry of the commodity or technical data into a foreign country, shall apply also to commodities or technical data directed to be unloaded at a port of call, as provided in this section.

(d) *Notification.* Upon discovery by any person included within the term "exporting carrier," as defined in this section, that a violation of the Export Administration Regulations has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person shall immediately notify both (1) Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044; and (2) the person in actual possession or control of the shipment.

[13th Gen. Rev. of Export Regs., 37 FR 12222, June 21, 1972, as amended at 47 FR 15115, Apr. 8, 1982; 48 FR 17583, Apr. 25, 1983. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 786.10 Other applicable laws and regulations.

The Export Control Regulations contained in this part apply only to exports regulated by the Bureau of Export Administration, U.S. Department of Commerce. Nothing contained in this Part 786 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing declarations and manifests, or any applicable rules and regulations of the Bureau of Customs.

[13th Gen. Rev. of Export Regs., 37 FR 12222, June 21, 1972. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

SUPPLEMENT NO. 1 TO PART 786

SUBPART D—EXEMPTIONS FROM THE REQUIREMENTS FOR THE FILING OF SHIPPER'S EXPORT DECLARATIONS—OF THE FOREIGN TRADE STATISTICS REGULATIONS OF THE BUREAU OF THE CENSUS (15 CFR 30.50-30.57)

NOTE: This Supplement references regulations regarding exemptions from Shipper's Export Declaration filing requirements, which are issued by the Bureau of the Census. These regulations are referenced in the Export Administration Regulations (EAR) for an informational purpose and are codified in the *Code of Federal Regulations* under Title 15, Part 30, Subpart D. The looseleaf version of the EAR contains the text of these regulations reprinted in full.

[52 FR 6139, Mar. 2, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 787—ENFORCEMENT

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787.14 Where to report violations.
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AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

SOURCE: 50 FR 53131, Dec. 30, 1985, unless otherwise noted. Redesignated at 53 FR 37751, Sept. 28, 1988.

§ 787.1 Sanctions.

(a) *Criminal*—(1) *Violations of Export Administration Act*—(i) *General.* Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) *Willful violations.* (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $1,000,000 whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(i) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) *Violations of False Statements Act.* The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) *Administrative*[1]—(1) *Denial of export privileges.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*see* § 788.3 *et seq*).

(2) *Exclusion from practice.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (*see* § 790.2(a)).

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[1] Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

(3) *Civil penalty.* A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[2]

(4) *Seizure.* Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data. Seized commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, *see* § 786.8(b)(6)).

§ 787.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

§ 787.3 Solicitation, attempt, and conspiracy.

(a) *Solicitation and attempt.* No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

§ 787.4 Acting with knowledge of a violation; possession with intent to export illegally.

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act:

(1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

§ 787.5 Misrepresentation and concealment of facts; evasion.

(a)(1) *Misrepresentation and Concealment.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

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[2] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

(i) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 770.2, or restrictive trade practice or boycott request report, as defined in § 769.6;

(iii) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(2) *Scope.* Paragraph (a)(1) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Bureau of Export Administration and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes.

(3) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Bureau of Export Administration, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

(b) *Evasion.* No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of the Act, or any regulation, order, license or other authorization issued under the Act.

[50 FR 53131, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 31177, Aug. 1, 1990]

§ 787.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

§ 787.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. *See,* for example, §§ 769.6, 772.9(e) and 779.6(b).

§ 787.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.

(a) *Interrogatories and requests for admission or to produce documents.* Whenever the Office of Export Enforcement or the Office of Antiboycott Compliance finds it impracticable, during the course of an investigation, other proceeding or action, to subpoena a person, or books, writings, records, or other tangible things bearing upon the matter being investigated, the Office of Export Enforcement or the Office of Antiboycott Compliance may serve upon such person interrogatories, requests for admission of facts, requests for the production of books, records and other writings, or requests to produce or make available other tangible things for inspection, including commodities or technical data exported from the United States, as therein specifically set forth. If a person, within 20 days after receiving interrogatories or requests, fails or refuses to:

(1) Furnish responsive answers to such interrogatories or requests for admissions;

(2) Produce the requested books, records and other writings; or

(3) Produce or make available for inspection other tangible things requested, including commodities or technical data exported from the United States, which are in that person's possession, custody or control, without good cause being shown, an order may be issued as provided in § 788.3(a)(2), denying export privileges to such person. This order shall remain in effect for five years or until such person responds to the interrogatories or requests or gives adequate reasons for failure or refusal to so respond.

(b) *Service.* Interrogatories or requests shall be served in the same manner as provided in § 788.4 (b) and (c) for service of a charging letter.

(c) *Enforcement procedures.* The procedure regarding applications for denial orders under § 787.8(a) and motions to vacate or modify such orders shall conform substantially to that provided for temporary denial orders by § 788.19.

§ 787.9 Licensee accountable for use of license.

The person to whom a license is issued becomes the licensee and will be held strictly accountable for use of the license. The licensee may not, without prior written approval of the Office of Export Licensing, in consultation with the Office of Export Enforcement, permit any other person to facilitate or effect the export of any commodity or technical data described in the license, except under this direction and responsibility as his true agent in fact. No term of sale or export or other agreement between the licensee or the order party and the purchaser or ultimate consignee of such commodity or technical data may provide otherwise.

§ 787.10 Unauthorized use and alterations of export control documents.

Except as otherwise specifically authorized in the Export Administration regulations or in writing by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no licensee or other person, may obtain, use, alter, or assist in or permit the use or alteration of, any export control document, for the purpose of or in connection with facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

§ 787.11 Trafficking and advertising export control documents.

(a) *Unlawful practices.* Without prior written approval of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may do any of the following with respect to any export or reexport under any export control document:

(1) *Transfers or changes of authority.* Effect any transfer of, or other change of the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; or permit any person to use the same other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(2) *Change in named parties.* Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(3) *Unlawful advertising or soliciting.* Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(i) Even though coupled with a condition requiring approval by the Office of Export Licensing of a new consignor or consignee or other change in the export license, by way of transfer, amendment or otherwise;

(ii) Where, in offering or soliciting the sale for export of any commodities or technical data, the communication indicates that the proposed seller of such commodities or technical data holds or will furnish a license or other export control document for the export of such commodities or technical data;

(iii) Where, in offering or soliciting the purchase for export of any commodities or technical data, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will furnish a license or other export control document for the export of those commodities or technical data.

(4) *Other unlawful practices.* Sections 787.10, 787.11, and 787.12, among other things, make it unlawful:

(i) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the commodities or technical data described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those commodities or technical data;

(ii) For any person to effect the export of the commodities referred to in paragraph (a)(4)(i) of this section for the benefit of or "for the account" of any person other than the licensee, regardless of the device, means, or fiction employed;

(iii) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(iv) For the named consignee to act "for the account" of a new unlicensed consignee; or

(v) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization of the Office of Export Licensing.

(b) *Transfer of dock receipts, bills of lading, or liens*—(1) *Use of certain export control documents.* Section 787.12(a) is not to be construed as affecting the transfer and other use of dock receipts, bills of lading, or other commercial documents necessary to complete a transaction authorized by the export license, or impairing the validity of liens or other security titles or interests created in good faith with respect to commodities or technical data or documents in the course of financing, warehousing, forwarding, or transporting commodities or technical data.

(2) *Disposition of export.* A person who is entitled to foreclose on any lien or other security title or interest, or who may exercise any rights as holder of the lien or other security title or interest, or who contemplates an export under the license by someone other than the licensee or to someone other than the purchaser or ultimate consignee designated in the license, must apply for a new license in accordance with the provisions of Part 772.

§ 787.12 Transactions with persons subject to denial orders.

(a) *Prohibited activities.* Without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(i) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(ii) In any reexport thereof; or

(iii) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

(b) *Definition of "person denied export privileges".* For the purpose of this section the term "person denied export privileges" means:

(1) Any person, firm, corporation, or other business organization whose export privileges are revoked or denied by any order or who is excluded by such order from practice before the Bureau of Export Administration; and

(2) Any other person, firm, corporation, or other business organization also denied export privileges or excluded from practice before the Bureau of Export Administration because of a relationship to any person denied export privileges through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services during the period of such order.

(c) *Applicability of orders.* Orders which revoke or deny the export privileges of any person or which exclude any person from practice before the Bureau of Export Administration may provide that the terms and prohibitions of such orders apply not only to the persons expressly named therein but also, for the purpose of preventing evasion, to any other person, firm corporation, or other business organization with which that person may then or thereafter (during the term of the order) be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. The Table of Denial Orders (*See* Supplement No. 1 to Part 788 and §§ 788.3 and 790.2) contains all orders which currently deny export privileges in whole or in part. The table also lists the names and addresses of such persons, the effective and expiration dates of the orders, a brief summary of the export privileges affected, and the citations to the volumes and pages of the FEDERAL REGISTER where complete texts of the orders are published. The publication of such orders in the FEDERAL REGISTER constitutes legal notice of the terms thereof to all persons.

[50 FR 53131, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 787.13 Recordkeeping.

(a) *Transactions subject to this regulation.* This section applies to—(1) transactions involving restrictive trade practice or boycott requirements or requests, (2) exports of commodities or technical data from the United States and any known reexports, transshipments, or diversions of commodities or technical data originally exported from the United States, or (3) any other transactions subject to these Regulations, regardless of whether the export or reexport is made, or proposed to be made, by any person with or without authorization by a validated license, a general license, or any other export authorization. This section also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction which a reasonably prudent exporter would believe likely to lead to a violation of export orders or regulations. It also applies to any exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein or that the commodity or technical data involved is to be reexported, transshipped, or diverted from Canada to another foreign country.

(b) *Persons subject to this regulation.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and keep records under any provisions of the Export Administration regulations, shall keep all the records described in paragraph (c) of this section, which are made or obtained by that person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) *Records to be kept.* The records to be kept under this section shall include export control documents, as defined in § 770.2, memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents and reports, and other written matter pertaining to the transactions described in paragraph (a) of this section, which are made or obtained by a person described in paragraph (b) of this section. In addition to the records required to be kept by this section, other sections of the Regulations require the retention of records, including but not limited to §§ 768.2, 769.6, 771.9, 771.10, 771.12, 771.17, 771.19, 771.22, 771.25, 772.1, 772.4, 772.5, 772.6, 772.7, 772.8, 772.10, 772.11, 772.13, 773.2, 773.3, 773.7, 773.8, 774.3, 774.7, 775.2, 775.3, 775.4, 775.5, 775.7, 776.4, 776.6, 776.7, 776.8, 776.9, 776.10, 776.11, 776.12, 778.6, 778.7, 779.4, 779.8, 779.9, 786.2, 786.5, 786.3, 786.6 and 791.2. The revocation or revision of any provision of the Export Administration Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep these records for the prescribed period.

(d) *Reproduction of records*—(1) *Definition.* "Reproduction" for the purpose of this paragraph (d) is defined to include any photographic, photostatic, micrographic, miniature photographic or other process which completely, accurately and durably reproduces the original record.

(2) *Use of reproductions.* Reproductions may not be substituted for original documents with respect to all categories of records required to be retained under any provisions of the Export Administration Regulations or of any order, until all of the following conditions are met:

(i) The original documents have been retained for twelve months after the beginning of the retention period set forth in paragraph (e) of this section or an exception has been granted under the provisions of paragraph (g) of this section.

(ii) All significant information, marks and/or other characteristics on the original document must be clearly visible and legibly reproduced.

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films, if needed.

(e) *Period of retention.*—(1) *Two-year general requirement.* Except as indicated in paragraph (e)(2) of this section, records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) *Retention requirements exceeding two years.*—(i) *Three years.* Records relating to restrictive trade practice or boycott requests must be kept for a period of three years from the latest of the times indicated in paragraph (e)(1) of this section. (See § 769.6(b)(8) of this subchapter.)

(ii) *Five years.* The following records must be kept for a period of five years from the latest of the times indicated in paragraph (e)(1) of this section:

(A) Shipper's Export Declarations covering exports made under a Project License, as required by § 773.2(f)(1) of this subchapter—the three-year retention period specified in § 30.11 of the Foreign Trade Statistics Regulations (15 CFR 30.11) does not apply to Declarations covering exports made under a Project License;

(B) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under a Distribution License, as required by § 773.3(h)(1) of this subchapter;

(C) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under the Service Supply Procedure, as required by § 773.7(e) of this subchapter;

(D) Supporting documentation that must be retained in the applicant's files, as required by § 772.11 and § 774.3 and part 775 of this subchapter.

(3) *Destruction or disposal of records.* If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies even if such records have been retained for a period of time exceeding that required by paragraph (e)(1) or (e)(2) of this section.

(f) *Producing and inspecting records.* (1) Persons within the United States may be requested to produce records which are required to be kept by any provision of the Export Administration Regulations or by any order, and to make them available for inspection and copying by any authorized agent, official or employee of the Bureau of Export Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition a district court to have the subpoena enforced.

(2) Every person abroad, required to keep records by any provision of the Export Administration Regulations or by any order, shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or a U.S. Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee. Persons located outside the United States who fail to comply with certain requests, including requests to produce documents, may be subject to orders denying export privileges. (*See* § 787.8.)

(g) *Requests for exceptions to recordkeeping requirements*—(1) *Effect of exception.* Recordkeeping entities (as defined in paragraph (b) of this section) wishing to maintain records on micrographic systems prior to the second year of the retention period may request an exception to the recordkeeping requirements. An exception, if granted, permits the recordkeeping entity or substitute micrographic records for original documents for the full retention period.

(2) *Basis for consideration.* When reviewing requests for exceptions, the Office of Export Licensing, in consultation with the Office of Export Enforcement or the Office of Antiboycott Compliance, will take into consideration the requestor's previous performance with respect to general export control matters and antiboycott matters, respectively.

(3) *Guidelines for micrographic systems.* To maintain records under this exception, a micrographic system shall have the following minimum requirements:

(i) The system shall provide commercial permanence of all records.

(ii) The system shall provide for frequent quality control inspection to ensure readability of all records.

(iii) Micrographed records must have a degree of legibility and readability, when displayed on a viewer and when reproduced on paper, equal to that of the original records. (*See* section 5 of IRS Revenue Procedure No. 81-46, 1981-40 C.B. 6 concerning technical standards of micrographed records.)

(iv) A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record, location of all documents relating to a given transaction, and determination of disposition of corresponding original documents.

(4) *Submission of requests for exception.* (i) The recordkeeping entity shall submit requests for exceptions involving general export matters to: Office of Export Licensing, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(ii) The recordkeeping entity shall submit requests for exceptions involving antiboycott matters to: Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Room H3886, Washington, DC 20230.

(iii) The requesting firm shall include in the request:

(A) Data on the proposed micrographic system, including specific information as to how the system conforms to requirements set forth in paragraph (g)(3) of this section;

(B) A statement concerning intended disposition of corresponding original documents; and

(C) Samples of records to be kept on the system.

(5) *Micrographing records under an exception.* Upon receiving written notice that an exception has been granted under this paragraph (g), the recordkeeping entity may substitute micrographic reproductions for only those records *already* in the retention period and approved under the exception. Originals of records that have not entered the retention period must be kept until the retention period begins (as set forth in § 769.6(b)(8) and paragraph (e) of this section) and micrographed records may then be substituted for the originals.

(6) *Disposition of original documents.* The recordkeeping entity shall include with micrographed records a signed document indicating final disposition of original documents, and the date of final disposition.

(7) *Revocation of exception.* The Department of Commerce may revoke an individual exception at any time if it determines that the firm has acted improperly, or for other good cause. A decision to revoke this exception may be appealed under the provisions of Part 789 of these regulations.

(h) *Records exempt from recordkeeping requirements.* The following kinds of records have been determined to be exempt from recordkeeping requirements:

Export Information Page;
Special Export Price List;
Vessel Log from Freight Forwarder;
Inspection Certificate;
Warranty Certificate;
Guarantee Certificate;
Packing Material Certificate;
Goods Quality Certificate;
Notification to Customer of Advance Mailings;
Letter of Indemnity;
Financial Release Form;
Financial Hold Form;
Export Parts Shipment Problem Form;
Draft Number Log;
Expense Invoice Mailing Log;
Financial Status Report;
Bank Release of Guarantees;
Cash Sheet;
Commission Payment Back-up;
Commissions Payable Worksheet;
Commissions Payable Control;
Check Request Forms;
Accounts Receivable Correction Form;
Check Request Register;
Commission Payment Printout;
Engineering Fees Invoice;
Foreign Tax Receipt;
Individual Customer Credit Status;
Request for Export Customers Code Forms;
Acknowledgement for Receipt of Funds;
Escalation Development Form;
Summary Quote;
Purchase Order Review Form;
Proposal Extensions;
Financial Proposal to Export Customers;
Sales Summaries

(The information collection requirements in paragraph (a)(1) were approved by the Office of Management and Budget under control no. 0625-0036; the information collection requirements in paragraph (a)(2) were approved under control nos. 0625-0052 and 0625-0104.)

[50 FR 53131, Dec. 30, 1985, as amended at 52 FR 48809, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989; 55 FR 25086, June 20, 1990; 55 FR 40827, Oct. 5, 1990; 55 FR 46512, Nov. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 46512, Nov. 5, 1990, in § 787.13, paragraph (c) was amended by adding the phrase "774.3," following the reference "773.8," in the second sentence and paragraph (e) was revised, effective February 4, 1991. For the convenience of the user, the superseded text follows:

§ 787.13 Recordkeeping.

* * * * *

(e) *Period of retention.* (1) Except for records relating to restrictive trade practice or boycott requests, which must be kept for three years (*see* § 769.6(b)(8)), records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned.

* * * * *

§ 787.14 Where to report violations.

(a) *Notification.* The Office of Export Enforcement has the primary responsibility for enforcing these Regulations except that the Office of Antiboycott Compliance has the responsibility for enforcing the Restrictive Trade Practices or Boycott Regulations in particular.

(1) If a person obtains knowledge that a violation of these Regulations has occurred or will occur, that person may notify:

Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 7138, Washington, DC 20044, Telephone (202) 377-4608, or

Office of Antiboycott Compliance, U.S. Department of Commerce, International Trade Administration, 14th Street and Constitution Avenue, NW., Room H3886, Washington, DC (202) 377-2381,

as appropriate

(2) Any Federal, State, or local government agency obtaining knowledge of a potential violation under these Regulations should immediately report such potential violation to:

Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044, Telephone (202) 377-4608, and

Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW. Room 3886, Washington, DC 20230, Telephone (202) 377-2381.

Failure to report such potential violations may result in the unwarranted issuance of validated export licenses or unlicensed exports to the detriment of national security, foreign policy or short supply interests of the United States.

(b) *Reporting requirement distinguished.* The notification provisions set forth in paragraph (a) of this section are not "reporting requirements" within the meaning of § 787.7.

[50 FR 53131, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 787.15 Voluntary self-disclosure.

(a) *General Policy.* The Department strongly encourages the disclosure of information to the Office of Export Enforcement by persons or firms who believe that they may have violated the export control provisions of the Act or any regulations, order, license or other authorization issued under the Act. Voluntary self-disclosure is a mitigating factor in determining the administrative sanctions, if any, imposed by the Office of Export Enforcement.

(b) *Limitations.* (1) The provisions of this section do not apply to disclosures of violations of section 8 of the Act, Foreign Boycotts, or part 769 of this subchapter, Restrictive Trade Practices or Boycotts.

(2) The provisions of this section apply only when information is provided to the Office of Export Enforcement for its review in determining whether to take administrative action under part 788 of this subchapter concerning violations of the export control provisions of the Act and the Regulations.

(3) The provisions of this section apply only when information is received by the Office of Export Enforcement for review prior to the time that either the Office of Export Enforcement or another agency, bureau or department of the United States Government has learned of the same or substantially similar information from another source and commenced an investigation or inquiry that involves that information, and that is intended to determine whether the Act

or any regulation, license, order or other authorization issued under the Act has been violated.

(4) While voluntary self-disclosure is a mitigating factor in determining the administrative sanctions, if any, imposed by the Office of Export Enforcement, it is a factor that is considered together with all of the other factors in the case. The weight given to voluntary self-disclosure is solely within the discretion of the Office of Export Enforcement and it is possible that the mitigating effect of voluntary self-disclosure could be outweighed by aggravating factors. It is also possible that the transactions that are the subject of voluntary self-disclosure could be referred to the Justice Department for criminal prosecution. In such a case, the Office of Export Enforcement would notify the Justice Department of the fact of the voluntary self-disclosure, but the Justice Department is not required to give that fact any weight.

(5) A firm will not be deemed to have made a disclosure under this section unless the person making the disclosure did so with the full knowledge and authorization of the firm's senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided to the Office of Export Enforcement in connection with a voluntary self-disclosure.* (*1*) *General.* Any person or firm wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Office of Export Enforcement as soon as possible after violations are discovered and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) *Initial notification.* (i) Ordinarily, the initial notification should be in writing and be sent to one of the addresses set forth in § 787.15(c)(7). The notification should include the name of the person making the disclosure and a brief description of the suspected violations.

(ii) The Office of Export Enforcement recognizes that there will be situations where it will not be practical to make the initial notification in writing. For example, this could occur if a shipment leaves the United States without the required export license and there may still be an opportunity to prevent acquisition of the commodities or technical data by unauthorized persons. In these situations, the Office of Export Enforcement should be contacted promptly at one of the following telephone numbers:

Headquarters, Washington, DC (202) 377-8208,
Boston Field Office (617) 565-6030
Chicago Field Office (312) 353-6640
Dallas Field Office (214) 767-9294
Los Angeles Field Office (714) 251-9001
Miami Field Office (305) 523-1401
New York Field Office (212) 264-1365
San Jose Field Office (408) 291-4202
Washington, DC Field Office (703) 487-4950

(iii) The initial notification should describe the general nature and extent of the violations. If the person or firm making the disclosure subsequently completes the narrative account required by § 787.15(c)(3), the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 787.15(b)(3). Upon completion of the review, the person should prepare and submit to the Office of Export Enforcement a detailed narrative account, supported by appropriate documentation, of all the suspected violations.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. The Office of Export Enforcement suggests that the review cover a period of five years prior to the date of the initial notification. If the person making the disclosure undertakes a review of more limited scope than that suggested, he risks failing to discover violations that may later become the subject of an investigation. Any violations that are not voluntarily disclosed are not sub-

ject to this rule. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the Export Administration Regulations or other provision of law requires disclosure. Upon completion of the review, the Office of Export Enforcement should be furnished with a narrative account that sufficiently describes the suspected violations so that it can assess their nature and gravity. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. Where appropriate, the narrative account should include, but is not limited to:

(i) The kind of violation involved, *e.g.* an unlicensed shipment, dealing with a party denied U.S. export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) Export license numbers;

(v) Commodity classification numbers, product descriptions and quantities, and value in U.S. dollars of the commodities or technical data involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of those documents that explain and support it. Where appropriate, the documentation should include, but is not limited to:

(A) Licensing documents such as export licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any other relevant documents must be retained by the person making the disclosure until the Office of Export Enforcement requests them or until a final decision on the disclosed information has been made. After a final decision, the documents should be handled in accordance with the recordkeeping rules set forth in § 787.13.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by someone with the authority to do so. Section 787.5, relating to false or misleading representations, applies in connection with the disclosure of information under § 787.15.

(6) *Oral presentations.* The Office of Export Enforcement believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation.

Therefore, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be mailed to:

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, Ben Franklin Station, P.O. Box 70, Washington, DC 20044

or delivered to:

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room H-6087B, Washington, DC 20230

Such information or correspondence may also be mailed or delivered to any of the following field offices:

Special Agent in Charge, Boston Field Office, Office of Export Enforcement, New Boston Federal Building, 10 Causeway Street, room 350, Boston, Massachusetts 02222

Special Agent in Charge, Chicago Field Office, Office of Export Enforcement, suite 300, 2400 E. Devon Avenue, Des Plaines, Illinois 60018

Special Agent in Charge, Dallas Field Office, Office of Export Enforcement, 525 Griffin Street, room 622, Box 122, Dallas, Texas 75202

Special Agent in Charge, Los Angeles Field Office, Office of Export Enforcement, 2601 Main Street, suite 310, Irvine, California 92714-6299

Special Agent in Charge, Miami Field Office, Office of Export Enforcement, 200 South Andrews Avenue, suite 500, Fort Lauderdale, Florida 33301

Special Agent in Charge, Office of Export Enforcement, New York Field Office, 26 Federal Plaza, room 3704, New York, New York 10278

Special Agent in Charge, Office of Export Enforcement, San Jose Field Office, U.S. Courthouse Building, 280 South First Street, room 4118, San Jose, California 95113-3002

Special Agent in Charge, Office of Export Enforcement, Washington, D.C. Field Office, P.O. Box 1838, 8001 Forbes Place (5285 Port Royal Road), room 201, Springfield, Virginia 22151-0838.

(d) *Action by the Office of Export Enforcement.* After the Office of Export Enforcement has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Office of Export Enforcement may then take any of the following actions:

(1) Inform the person or firm making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 788.17(b) of this subchapter and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 788.4 of this subchapter if a settlement is not reached; or

(5) Refer the matter to the United States Department of Justice for criminal prosecution.

(e) *Criteria.* For purposes of determining what administrative action to take and what sanctions, if any, to impose, the fact that a voluntary self-disclosure has been made will be a mitigating factor. OEE will take that factor into account along with other mitigating and aggravating factors when determining what, if any, administrative sanction it will impose. The factors that OEE will consider are in its sole discretion. Some of the factors are:

(1) The extent to which the purpose of the control is undermined by the transaction;

(2) Whether the transaction would have been authorized had proper application been made;

(3) The quantity and value in U.S. dollars of the commodities or technical data involved;

(4) Why the violations occurred. For example, the Office of Export Enforcement may consider whether the violations were intentional or inadvertent; the degree to which the person or firm responsible for the violation making the disclosure was familiar with the Regulations; and whether the violator was the subject of prior administrative or criminal action under the Act;

(5) Whether, as a result of the information provided, the Office of Export Enforcement is able to prevent any commodities or technical data exported illegally from reaching unauthorized persons or destinations;

(6) The degree of cooperation with the ensuing investigation;

(7) Whether the person or firm has instituted or improved an internal compliance program to reduce the likelihood of future violations.

(f) *Treatment of unlawfully exported commodities after voluntary self-disclosure.* (1) In accordance with § 772.7(b) of this subchapter, if commodities or technical data that are the subject of a voluntary self-disclosure were exported without the required license, no such license will be issued after the fact.

(2) Reexport authorization for commodities or technical data that are the

subject of a voluntary self-disclosure and that have been exported contrary to the provisions of the Act or the regulations may be requested from the Office of Export Licensing in accordance with the provisions of part 774 of this subchapter. If the applicant for reexport authorization knows or has reason to know that the commodities or technical data are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

(3) Section 787.4(a) prohibits any person from taking certain actions with knowledge or reason to know that a violation of the Act or the Regulations has occurred. Any person who has made a voluntary self-disclosure has reason to believe that a violation may have occurred. However, for those commodities or technical data that are the subject of a voluntary self-disclosure, permission to take any of the actions set forth in § 787.4(a), which may otherwise be prohibited, may be requested from the Office of Export Licensing. The Office of Export Licensing's decision on any such request will be made in consultation with the Office of Export Enforcement. Requests for permission should be sent to the Office of Export Licensing at the following address: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

[55 FR 32388, Aug. 9, 1990]

PART 788—ADMINISTRATIVE PROCEEDINGS

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SUPPLEMENT 2 TO PART 788—GEOGRAPHICAL LISTING OF PARTIES SUBJECT TO DENIAL ORDER [NOTE]

AUTHORITY: Pub. L. 96-72 of September 29, 1979, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, 95 Stat. 1727, by Pub. L. 99-64 of July 12, 1985, 99 Stat. 120, and by Pub. L. 100-418 of August 23, 1988, 102 Stat. 1107; E.O. 12525 (3 CFR 377 (1986)), E.O. 12214 (3 CFR 256 (1981)), and E.O. 12002 (3 CFR 133 (1978)).

SOURCE: 50 FR 53137, Dec. 30, 1985, unless otherwise noted. Redesignated at 53 FR 37751, Sept. 28, 1988.

§ 788.1 Purpose and limitations.

The regulations in this part set forth the procedures for imposing administrative sanctions for violation of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985 (Pub. L. 99-64, 99 Stat. 120)) (Act), the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107), the regulations, or any order, license or other authorization issued under the Act. An administrative law judge shall conduct the proceedings, except for purposes of appeals under § 788.22 or reviews by the Under Secretary under § 788.23. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the Act, including any exercise of the investigative authorities conferred by sections 8 and 12(a) of the Act. These regulations implement the requirements of section 11(c)(2) of the Act, with respect to violations of the antiboycott provisions of the Act and regulations, that administrative sanctions be determined only after notice and opportunity for an agency hearing on the record in accordance with the applicable provisions of the Administrative Procedure Act (5 U.S.C. 554-557). These regulations also implement the requirements of section 13(c)a of the Act, with respect to violations of the export control provisions of the Act and the regulations, that administrative sanctions be determined only after notice and opportunity for an agency hearing on the record in accordance with the applicable provisions of the Administrative Procedure Act (5 U.S.C. 556-557). These regulations do not confer any procedural rights or requirements based upon the Administrative Procedure Act to proceedings charging violations under the Act, except as expressly provided for in this part.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 31177, Aug. 1, 1990]

§ 788.2 Definitions.

As used in this part:

Administrative Law Judge. The person authorized to conduct hearings in administrative proceedings brought under the Export Administration Act. The administrative law judge may impose sanctions only after notice and opportunity for an agency hearing on the record.

Department. The Office of Antiboycott Compliance, the Office of Export Enforcement, the Office of Export Licensing, or the Office of Technology and Policy Analysis, Bureau of Export Administration, United States Department of Commerce.

Party. The Department and any person named as a respondent in a charging letter or order proposed or issued under this part.

Regulations. The Export Administration Regulations (15 CFR Parts 768-799), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR Part 769).

Respondent. Any person named in a charging letter, temporary denial order, or order to show cause proposed or issued under this part.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1989 and amended at 54 FR 13056, Mar. 30, 1989]

§ 788.3 Denial of export privileges and imposition of civil penalties.

(a) *Administrative sanctions.*[1] A respondent who is found to have violated the Act, the Regulations, or any order, license or other authorization issued under the Act, is subject to any or all of the following sanctions under this part:

(1) *Suspension or revocation of validated export licenses.* Any outstanding validated export license affecting any transaction in which the respondent may have any interest, direct or indirect, may be suspended or revoked[2] and ordered returned immediately to the Office of Export Licensing;

(2) *General denial of export privileges.* The respondent may be denied[3]

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[1] Violations of the Act of regulations may result in: (a) the impositition of administrative sanctions, either in addition to or instead of a fine or imprisonment as described in § 787.1(a) of the regulations; (b) forfeiture of any property interest in and/or proceeds from goods or tangible items involved in an export or attempted export in violation of controls imposed for national security reasons under section 5 of the Act; (c) seizure or forfeiture of property under 22 U.S.C. 401; (d) any other liability or penalty imposed by law, or (e) any combination of these penalties.

[2] Revocation of outstanding validated licenses and general denial of export privileges, authorized here as sanctions in administrative proceedings, are separate and distinct from administrative actions that the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may take under section 11(h) of the Act to deny permission to apply for or use any export license (*see* § 770.15) or to revoke validated export licenses (*see* § 772.1(g)) to a person convicted of a violation of the Export Administration Act, the International Emergency Economic Powers Act, sections 793, 794, or 798 of Title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

[3] See footnote 2.

the privilege of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, or produced abroad by persons subject to the jurisdiction of the United States, or which are otherwise subject to the Act or the Regulations. Such participation may include:

(i) Participation as a party or as a representative of a party to any validated exported license application;

(ii) Participation in the preparing or filing of an application for, or the obtaining or using of, any validated or general export license, reexport authorization, or other export control document;

(iii) Participation in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data; and

(iv) Participation in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges may be partial or entire, may be by commodity or geographical area, and may be for any specified period of time.

(3) *Exclusion from practice.* Any respondent acting as attorney, accountant, consultant, freight forwarder, or in any other representative capacity with regard to any export license application or other matter before the Department may be excluded from any or all such activities before the Department.

(4) *Civil penalty.* In addition to or instead of any or all of the administrative sanctions described in paragraphs (a) (1), (2) and (3) of this section, a civil penalty not to exceed $10,000 for each violation may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under section 5 of the Act.

(b) *Suspension of sanctions.* The imposition of any of these sanctions may be suspended under § 788. 16(c).

(c) *Applicability to related persons.* In order to prevent evasion, certain types of orders under this part may, after notice and opportunity for comment such as through an order to show cause, be made applicable not only to the respondent, but also, to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. Orders applicable to related persons include: those that deny or affect export privileges, those that exclude a respondent from practice before the Bureau of Export Administration and those that contain provisions implementing § 787.12 of the Regulations.

[50 FR 53137, Dec. 30, 1985, as amended at 52 FR 48809, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989; 55 FR 31177, Aug. 1, 1990]

§ 788.4 Institution of administrative proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement [4] or the Director of the Office of Antiboycott Compliance, as appropriate, may begin administrative proceedings under this part by issuing a charging letter in the name of the Department. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the Act, the regulations or any order, license or other authorization issued under the Act, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice that the respondent, if found to have committed the alleged violation, will be subject to sanctions under § 788.3(a). The charging letter will inform the respondent that failure to answer as provided in § 788.7 may be treated as a default under § 788.8; that he is entitled to a hearing if he files a written demand for one with his answer, and that if he so de[illegible]res he may be represented by coun[illegible]el. A copy of the charging letter shall be filed with the administrative law judge. Charging letters may be amended, supplemented or withdrawn at any time before an answer is filed, or, with permission of the administrative law judge afterwards.

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[4] By agreement with the Director of the Office of Industrial Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the Export Administration Act.

(b) *Service of charging letter on resident.* A charging letter, or any amendment or supplement thereto, shall be served upon a respondent:

(1) By mailing a copy by registered or certified mail addressed to the respondent at his last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling. Service made in the manner described in paragraph (b)(2) or (3) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left and shall be filed with the administrative law judge.

(c) *Service of charging letter on nonresident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (b) of this section inappropriate or ineffective, service of the charging letter on a respondent not a resident of the United States may be made by any method that is permitted by the country in which the respondent resides and satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

(d) *Date.* The date of service of a charging letter shall be the date of its delivery, or of its attempted delivery if delivery is refused.

§788.5 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee thereof, and a partnership by a member thereof. Any respondent may appear by counsel, who shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia. A respondent personally or through counsel shall file notice of appearance with the administrative law judge. The Department shall be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 31177, Aug. 1, 1990]

§788.6 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be delivered or mailed, to "EAR Administrative Proceedings," U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, or by express or equivalent parcel delivery service, is acceptable. Filing by mail from a foreign country shall be by airmail. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service in the manner set forth in paragraph (a) is acceptable. Service on the Department shall be addressed to the Chief Counsel for Export Administration, Room H-3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Service on a respondent shall be to the address to which the charging letter was sent or to such other address as respondent may be provided. When a party has appeared by counsel, service on such counsel shall constitute service on that party.

(c) *Date.* The date of service or filing shall be the day when the papers are deposited in the mail or are delivered in person, or by delivery service.

(d) *Certificate of service.* The original of every paper filed and served upon parties other than the charging letter shall be endorsed with a certificate of service signed by the party making service, stating the date and manner of service.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 31177, Aug. 1, 1990]

§ 788.7 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within 30 days after service unless time is extended under § 788.15.

(b) *Contents of answer.* An answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer shall so state and shall operate as a denial. Failure to deny or controvert a particular allegation will be deemed admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except upon good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by the Department for a hearing must be filed with the presiding official within 14 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown.

(d) *Documentary evidence.* If the respondent does not demand a hearing, he must file with the answer originals or photocopies of all correspondence, papers, records, and other documentary evidence that support his position.

(e) *English language required.* The answer, and all other documentary evidence, must be submitted in English or translations into English must be filed at the same time.

§ 788.8 Default.

(a) *General.* If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside default*—(1) *Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 788.7(b), the administrative law judge may, after giving all parties opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and resume the proceedings.

(2) *Time limits.* A petition under this section must be made either within one year of the date of entry of the order which the petition seeks to have vacated, or before the expiration of any administrative sanctions imposed thereunder, whichever is later.

§ 788.9 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply to the extent consistent with these regulations and except as otherwise directed by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve upon any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceeding as he deems reasonable and appropriate. He may strike related charges or defenses in whole or in part, or he may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States may be sought under section 12(a) of the Act.

§ 788.10 Subpoenas.

At the request of any party, the administrative law judge may issue subpoenas requiring the attendance of witnesses at any hearing and the production of such books, records or other documentary or physical evidence as he deems relevant and material to the proceedings, and reasonable in scope.

§ 788.11 Matter protected against disclosure.

(a) *General.* The public availability of documentary evidence is subject to § 788.20.

(b) *Protective measures.* In administering the Act, it is necessary for the Department of Commerce to receive and consider information and documents that are sensitive from the standpoint of national security or business confidentiality and are to be protected against disclosure. Accordingly, and without limiting the discretion of the administrative law judge to give effect to any other applicable privilege, it shall be proper for the administrative law judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his judgment may be consistent with the objective of preventing undue disclosure of such sensitive documents or information. Where the administrative law judge determines that documents containing such sensitive matter need to be made available to a respondent to avoid prejudice, he may direct the Department to prepare an unclassified and non-sensitive summary or extract of such documents. The administrative law judge may compare such extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain classified or undisclosed. The summary or extract may be admitted as evidence in the record.

(c) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, he may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising the confidentiality of the national security or business information. Such arrangements may include obtaining security clearances, obtaining a national interest determination under section 12(c) of the Act, or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

(d) *In camera proceedings.* With the approval of the administrative law judge, the Department may present information and documents in camera in the presence of the respondent or respondent's counsel.

§ 788.12 Prehearing conference.

(a) The administrative law judge, on his own motion or on request of a party, may direct the parties to attend a prehearing conference to consider: (1) Simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matters as may expedite the disposition of the proceedings. The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the administrative law judge. For all conference proceedings, the administrative law judge will prepare a summary of any actions agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties.

(b) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with him to achieve the purposes of such a conference. The administrative law judge, as in paragraph (a) of this section, will prepare a summary of such correspondence and any actions taken or agreed upon and will incorporate into it any written stipulations or agreements made by the parties.

§ 788.13 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, DC unless the administrative law judge determines, based upon good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings shall be conducted in a fair and impartial manner by the administrative law judge who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if he deems this necessary or advisable in order to protect sensitive matter (see § 788.11) from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy upon payment of proper costs. Upon such terms as the administrative law judge deems just, he may direct that the testimony of any person be taken by deposition and may admit an affidavit as evidence, provided that affidavits shall have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant testify at the hearing and be subject to cross examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

§ 788.14 Proceeding without a hearing.

If the parties have waived a hearing, the case shall be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge shall give each party reasonable opportunity to file rebuttal evidence.

§ 788.15 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge may modify any discovery procedures or other procedures established by this part, except as set forth in paragraph (b) of this section.

(b) *Extension of time.* (1) *Before* expiration of the applicable time limitation, parties may stipulate to its extension as set forth in paragraph (a) of this section.

(2) The administrative law judge may, on his own initiative or upon application by any party, either *before* or *after* expiration of the applicable time limitation, extend the time within which to prepare and submit an answer to a charging letter or do any other act required by this part.

§ 788.16 Decision of the administrative law judge.

(a) *Predecisional matters.* Except insofar as the default procedures of § 788.8 may be applicable, the administrative law judge shall give the parties reasonable opportunity to submit:

(1) Exceptions to any ruling by him or the admissibility of evidence proferred at the hearing; (2) Proposed findings of fact and conclusions of law; (3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and (4) A proposed order. Such exceptions, proposed findings and conclusions, arguments in support thereof, and proposed order shall be made a part of the record, together with the administrative law judge's ruling on each.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge shall issue a written decision.

(1) *Initial decision.* For proceedings charging violations relating to section 8 of the Act, the decision rendered shall be an *initial* decision. The decision shall include findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, the regulations, or any order, license or other authorization issued under the Act. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more charges, he shall order dismissal of the charges in whole or in part as appropriate. If the administrative law judge finds that one or more violations have been committed, he shall order appropriate disposition of the case. He may issue an order imposing administrative sanctions, including civil penalties as provided in § 788.3, or take such other action as he deems appropriate. A copy of the decision and order shall be served on each party.

(2) *Recommended decision.* For proceedings not involving violations relating to section 8 of the Act, the decision rendered shall be a *recommended* decision. The decision shall include recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, the regulations or any order, license or other authorization issued under the Act. If the administrative law judge finds that the evidence of record is insufficient to sustain a recommended finding that a violation has occurred with respect to one or more charges, he shall recommend dismissal of the charges in whole or in part as appropriate. If the administrative law judge finds that one or more violations have been committed, he shall recommend appropriate disposition of the case. He may recommend an order imposing administrative sanctions, including civil penalties as provided in § 788.3, or recommend such other action as he deems appropriate. The administrative law judge shall immediately refer a copy of the recommended decision and order to the Under Secretary of Com-

merce for Export Administration ("Under Secretary") for review in accordance with § 788.23. The administrative law judge shall also immediately serve a copy of the recommended decision upon all parties. Because of the time limits, service upon parties shall be by personal delivery, express mail or other overnight carrier.

(c) *Suspension of sanctions.* Any order providing administrative sanctions may provide that the imposition of any sanction shall be suspended in whole or in part upon such terms of probation or other conditions as the administrative law judge may specify. Any final decision may be modified or revoked by the administrative law judge or by the Under Secretary, upon application of the Department showing a violation of the probationary terms or other conditions, after service upon the respondent of notice of the application in accordance with the service provisions of § 788.4 and with such opportunity for response as the responsible official in his discretion may allow. A copy of any order modifying or revoking suspension shall also be served on the respondent in accordance with the provisions of § 788.4.

(d) *Effect of decision.* For proceedings charging violations relating to section 8 of the Act, the initial decision and implementing order shall become final upon expiration of the time for filing an appeal unless an appeal shall have been filed under § 788.22.

(e) *Time for decision.* As required by section 13(c) of the Act, proceedings not involving violations relating to section 8 of the Act shall be concluded, including the review of the Under Secretary under § 788.23, within one year of submission of a charging letter, unless the administrative law judge, for good cause shown, extends such period. The charging letter shall be deemed to have been submitted to the administrative law judge on the date of filing of an answer or on the date of filing by the Department of a proposed default order pursuant to § 788.8(a), whichever shall first occur.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988, and amended at 55 FR 31177, Aug. 1, 1990]

§ 788.17 Consent proceedings.

(a) The parties may submit a consent proposal to the administrative law judge at any time after the service of a charging letter but before issuance of an initial or recommended decision by the administrative law judge. The consent proposal shall include the proposed consent agreement and a proposed order. If the administrative law judge does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the administrative law judge approves the proposal, he will:

(1) With respect to proceedings charging violations relating to section 8 of the Act, issue a decision and order on the basis of the proposal or such modification thereof as the parties may have agreed to in writing and the order shall immediately become final; and

(2) With respect to proceedings not involving violations relating to section 8 of the Act, issue a recommended order approving the consent agreement which shall be referred to the Under Secretary under § 788.23.

(b) Cases may also be settled before service of a charging letter. In such event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for approval and signature to the Assistant Secretary of Commerce for Export Enforcement (Assistant Secretary). The consent proposal shall include a consent agreement and a proposed order. If the Assistant Secretary does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the Assistant Secretary approves the proposal he will issue an order, and no action by the administrative law judge shall be required. The Assistant Secretary may order that any administrative sanction imposed shall be suspended in whole or in part upon such terms of probation or other conditions as he deems appropriate. Any such suspension may be modified or revoked by the Assistant Secretary, as provided in § 788.16(c).

(c) Cases which are settled may not be reopened or appealed.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 788.18 Reopening.

Procedures. A party may petition the administrative law judge within one year of the date of the final decision to reopen proceedings to receive any relevant and material evidence which was unknown or unobtainable at the time the proceedings were held. The petition shall include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge shall grant or deny the petition after providing other parties reasonable opportunity to comment. If proceedings are reopened, the administrative law judge may make such arrangements as he deems appropriate for receiving the new evidence and completing the record. Where proceedings have been reopened, the administrative law judge shall issue a new decision and order, reaffirming, vacating or modifying the prior decision and order in accordance with § 788.16.

§ 788.19 Temporary denials.

(a) *General denial of export privileges.* The following procedures apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued.

(1) Without limiting any other action the Department may take under the regulations (including §§ 770.2(b), 772.1(d) and 788.4) with respect to any application, license or other authorization issued under the Act, the Department may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined below, of the Act, the regulations, or any order, license or other authorization issued under the Act. Such temporary denial order shall summarily deny any or all of the export privileges specified in § 788.3(a) (1) and (2) to any person named in the order.

(2) In order to prevent evasion or circumvention of the temporary denial order, the order or any renewal thereof can name and deny export privileges to, in addition to any person designated as a respondent, any other person who is then related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. The Department may seek to add to a temporary denial order, at a time other than initial issuance or renewal, any person who the Department then has reason to believe is related to a respondent by following the procedures in § 788.3(c) for issuance of an order to show cause.

(b) *Issuance.* (1) The Assistant Secretary may issue a temporary denial order upon a showing by the Department that the order is necessary in the public interest to prevent an imminent violation of the Act, the regulations, or any order, license or other authorization issued under the Act.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy and investigative concerns.

(3) A violation may be "imminent" either in time or in degree of likelihood. To establish grounds for the temporary denial order, the Department may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. In support of its position concerning the likelihood of future violations, the Department may show that the violations under investigation or charges were significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin goods and technology in order to reduce the likeli-

hood that a person under investigation or charges continues to export or acquire abroad such goods and technology, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order shall be issued for a period not exceeding 180 days.

(c) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to the Department in the manner set forth in § 788.6(b).

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, the Department believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, the Department may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order for an additional period not exceeding 180 days, with modifications if any are appropriate. The Department's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 788.6(b) which shall constitute notice of the renewal application.

(2) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Assistant Secretary may consider submissions received not later than five days before the expiration date. The Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent's submission, he may allow the parties to take limited discovery, consisting of a request for production of documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily shall consist only of oral argument. The only issue to be considered on the Department's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein.

(ii) Any person designated as a related party may not oppose issuance or renewal of the temporary denial order but may file an appeal in accordance with paragraph (e) of this section.

(iii) If no written opposition to the Department's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(3) A temporary denial order may be renewed more than once.

(e) *Appeals*—(1) *Filing.* (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the Administrative Law Judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor shall it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds.* Grounds shall be specified. (i) A respondent may appeal to the Administrative Law Judge from an order issuing or renewing a temporary denial order on the ground that a finding of an imminent violation is unsupported. (ii) Any related party may appeal any finding that he is related to a respondent but may not appeal the underlying issuance or renewal of the temporary denial order.

(3) *Appeal procedure.* A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on the Department which shall have seven working days to file a reply. Service on the Administrative Law Judge shall be addressed to the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Service on the Department shall be as set forth in

§ 788.6(b). The Administrative Law Judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended decision.* Within 10 working days after an appeal is filed, the Administrative Law Judge shall submit a recommended decision to the Under Secretary, stating whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final decision.* Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review shall ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the Act, the regulations, or any order, license or other authorization issued under the Act. The Under Secretary's written order shall be final and is not subject to judicial review, except as provided in § 788.19(g).

(f) *Delivery.* A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the FEDERAL REGISTER and shall be delivered to the respondent, or any agent designated for this purpose, and to any related party in the same manner as provided in § 788.6 for filing for papers other than a charging letter.

(g) *Judicial review.* The Under Secretary's written order may be appealed to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(d)(3).

[50 FR 53137, Dec. 30, 1985, as amended at 52 FR 48809, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 4005, Jan. 27, 1989; 54 FR 13056, Mar. 30, 1989; 55 FR 31177, Aug. 1, 1990]

§ 788.20 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under § 788.22 or review under § 788.23, the decision of the administrative law judge and such submissions as are provided for by §§ 788.22 and 788.23, shall constitute the record and the exclusive basis for decision. When a matter is settled before service of a charging letter, the record shall consist of the proposed charging letter, the consent agreement and the order.

(b) *Restricted access.* On his own motion, or on the motion of any party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record under paragraph (b) of this section is responsible for submitting at the time the claim of confidentiality is asserted, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record shall be placed in a separate file and the file shall be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted portion of the record.

(c) *Availability of documents*—(1) *Scope.* (i) For proceedings started on or after October 12, 1979, all charging letters, answers, decisions, and orders disposing of a case shall be made available for public inspection in the Bureau of Export Administration Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H-4886, 14th St. and Pennsylvania Avenue NW., Washington, DC 20230, (202) 377-2593. The complete record for decision, as defined in paragraphs (a) and (b) of this section, shall be made available on request. In addition, all decisions on appeal and those final orders providing for denial, suspension or revocation of export licensing privileges shall be published in the FEDERAL REGISTER.

(ii) For proceedings started before October 12, 1979, the public availability of the record for decision will be governed by the applicable regulations in effect when the proceedings were begun.

(2) *Timing*—(i) *Antiboycott cases.* For matters brought under section 8 of the Act, documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to segregate any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

(ii) *Other cases.* In all other cases brought under the Export Administration Act, the availability of documents shall begin after the final administrative disposition of the case. In these cases, parties desiring to segregate a portion of the record under § 788.20(b) shall assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 788.21 Consolidation of proceedings.

On his own motion or on motion of any party, and with reasonable notice to all parties affected, the administrative law judge may consolidate two or more proceedings under this part involving different respondents, if all parties to the proceedings agree in writing to consolidation and if the administrative law judge, in his discretion, determines that consolidation would serve more efficiently to resolve common questions of law or fact raised in such proceedings.

§ 788.22 Appeals.

(a) *Grounds.* For proceedings charging violations relating to section 8 of the Act, a party may appeal to the Under Secretary from an order disposing of a proceeding, granting or denying a request for a proceeding, denying a petition to set aside a default or denying a petition for reopening, or from refusal to approve a proposed consent agreement, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record; (2) that a necessary legal conclusion or finding is contrary to law; (3) that prejudicial procedural error occurred, or (4) that the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds upon which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal of an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3898B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary for Export Administration may designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, shall grant a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his discretion, the Under Secretary may accept new submissions but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision shall be in writing and shall be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 788.23 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to section 8 of the Act, the administrative law judge shall immediately refer the recommended decision and proposed order to the Under Secretary for Export Administration ("Under Secretary"). Because of the time limits provided under the Act for review by the Under Secretary, service upon parties shall be by personal delivery, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision for any reason, the Under Secretary for Export Administration shall designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from receipt of the recommended decision in which to submit simultaneous responses. Parties thereafter shall have 8 days from receipt of any response(s) in which to submit simultaneous replies. Any response or reply must be received within the times specified by the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3898B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Service upon the Under Secretary and upon parties shall be as described in paragraph (a) of this section.

(c) *Final decision.* Within 30 days after receipt of the recommended decision, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision of the administrative law judge. Because of the time limits, the Under Secretary's review shall ordinarily be limited to the written record for decision, including the transcript of any hearing plus any submissions by the parties concerning the recommended decision.

(d) *Delivery.* A copy of the final decision and implementing order shall be delivered to the parties and shall be publicly available in accordance with § 788.20.

(e) The Under Secretary's written order may be appealed within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(c)(3).

[50 FR 53137, Dec. 30, 1985. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 4006, Jan. 27, 1989; 54 FR 13056 and 13057, Mar. 30, 1989]

SUPPLEMENT NO. 1 TO PART 788—TABLE OF DENIAL ORDERS CURRENTLY IN EFFECT

(a) *Contents.* This table lists orders that currently deny export privileges in whole or in part. Orders are published in full in the FEDERAL REGISTER as cited in the column entitled, "Federal Register Citation."

(1) *Related parties.* Some of the individuals and firms whose names appear in the column entitled "Name and Address" were not found to have violated the Act or Regulations, but they have been made subject to denial or probation orders under § 788.3(b). In such cases, an appropriate note appears in the column entitled "Export Privileges Affected."

(2) *Publication of orders.* New or amended denial orders are published in the FEDERAL REGISTER as they are issued, and their issuance announced in Export Administration Bulletins.

(3) *Table: Updating and availability.* The Table of Denial Orders is revised and updated semiannually by adding new or amended orders and deleting orders that have expired. Between the semiannual revisions of the Tables addenda are published in Export Administration Bulletins. The table does not appear in the CFR; however, copies are available from—Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

(b) *Effect of denial orders.* Section 387.12 of the Bureau of Export Administration Regulations makes it unlawful, without prior specific authorization from the Office of Export Licensing, for any person to:

(1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (i)

in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (ii) in any reexport thereof, or (iii) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit from or have any interest in, directly or indirectly, any of these transactions.

(3) A denial order applies not only to the persons or firms named in the order, but may also, after notice and opportunity for comment, be made applicable to other persons with whom the respondent(s) may then or thereafter be related by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. (See § 788.3(b)). Accordingly, if it is: (i) *Known* that a person or firm is related to a party denied export privileges, unless specific authorization is given (see § 787.12), no export transaction may be consummated with or for the person or firm if, after notifying the Bureau of Export Administration of such fact, the person or firm is itself denied export privileges; or (ii) suspected that a person or firm is related to a party denied export privileges, the Bureau of Export Administration should be contacted prior to the consummation of any export transaction. (See also §787.14.)

[45 FR 84028, Dec. 22, 1980, as amended at 47 FR 15115, Apr. 8, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055 and 13056, Mar. 30, 1989]

SUPPLEMENT NO. 2 TO PART 788—GEOGRAPHICAL LISTING OF PARTIES SUBJECT TO DENIAL ORDERS

NOTE: The Geographical Listing of Parties Subject to Denial Orders issued under this supplement does not appear in the Code of Federal Regulations. This listing is based on the Table of Denial Orders (Supplement No. 1 to 15 CFR Part 788) which is compiled from orders denying export privileges published in full in the FEDERAL REGISTER and is frequently amended. Readers are cautioned that orders denying export privileges and any modifications to such orders are effective upon signature. All persons affected are deemed to have notice of the provisions of the orders upon publication in the FEDERAL REGISTER. A copy of the Geographical Listing of Parties Subject to Denial Orders, which is revised semiannually, is available from the Office of Technology and Policy Analysis, P.O. Box 273, Washington, DC 20044. Addenda subsequent to the semiannual revisions are published in Export Administration Bulletins.

PART 789—APPEALS

Sec.

789.1 General provisions.
789.2 Appeal from an administrative action.
789.3 Request to issue, amend or revoke a regulation.

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 et *seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

EDITORIAL NOTE: Part 389 was redesignated as Part 789 at 53 FR 37751, Sept. 28, 1988.

§ 789.1 General provisions.

(a) *Purpose.* This part sets forth the procedures applicable to appeals from administrative actions taken under the Export Administration Act of 1979 ("the Act") or the Export Administration Regulations (the "Regulations").

(b) *Definitions.* The following are definitions of terms used in this part.

Administrative action. Any action taken by the U.S. Department of Commerce under the Act or the regulations with respect to a particular person including denial of an export license application, return without action of a license application for other than procedural deficiencies or additional information, or classification of an applicant's commodity. Administrative actions do not include enforcement activities under Parts 787 and 788.

Appeal. A request for relief from an administrative action taken by the U.S. Department of Commerce.

Appellant. A person requesting relief from an administrative action taken by the U.S. Department of Commerce.

Assistant Secretary. The Assistant Secretary of Commerce for Export Administration.

Person. Any individual, partnership, corporation, or other form of association.

Presiding official. The Assistant Secretary or any Department official who may be designated by the Assistant Secretary to conduct informal hearings.

[45 FR 85448, Dec. 29, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13057, Mar. 30, 1989]

§ 789.2 Appeal from an administrative action.

(a) *Grounds for appeal and scope of review.* Any person directly and adversely affected by an administrative action (excluding denial or probation orders, civil penalties, sanctions, or other actions under Parts 787 and 788) taken by the U.S. Department of Commerce may appeal to the Assistant Secretary for reconsideration of that administrative action. Regulations may not be appealed under this part. (*See* § 789.3.)

(b) *Appeal procedure*—(1) *Filing.* An appeal under this part must be received by the Office of the Assistant Secretary for Export Administration, Bureau of Export Administration, Room H-3886C, 14th Street and Pennsylvania Avenue NW., U.S. Department of Commerce, Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* A full written statement in support of the appeal, including a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified, must be filed with the appeal. The presiding official may request any further submissions deemed helpful in resolving the appeal. At his discretion, the presiding official may accept additional submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time of filing an appeal, an opportunity for an informal hearing. However, the Assistant Secretary may grant or deny a request for an informal hearing. All hearings, if granted, will be held in Washington unless the presiding official determines, based upon good cause shown, that another location would better serve the interests of justice.

(4) *Informal hearing procedures*—(i) *Presentation.* The presiding official shall provide an opportunity for the appellant and/or representative to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action and may require that any facts in controversy be covered by affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the presiding official to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(iii) *Procedural questions.* The presiding official shall have the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the presiding official determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant shall pay all expenses.

(v) *Report.* When the presiding official is other than the Assistant Secretary, that official shall submit a written report containing a summary of the hearing and recommended action to the Assistant Secretary.

(c) *Decisions*—(1) *Determination of appeal.* In addition to the documents specifically submitted in connection with the appeal, the Assistant Secretary shall consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Assistant Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Assistant Secretary shall decide an appeal within a reasonable time after receipt of the appeal. If the Assistant Secretary cannot act on the appeal for any reason, the Under Secretary for Export Administration may designate another Department of Commerce official to receive and act on the appeal. The decision shall be issued to the appellant in writing and shall contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Assistant Secretary shall be final.

(d) *Effect of appeal.* The taking of an appeal shall not stay the operation of any administrative action unless the Assistant Secretary, upon application by the appellant and with opportunity for response, shall grant a stay.

[45 FR 85448, Dec. 29, 1980, as amended at 47 FR 15115, Apr. 8, 1982; 52 FR 29177, Aug. 6, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056 and 13057, Mar. 30, 1989]

§ 789.3 Request to issue, amend or revoke a regulation.

Requests to issue, amend or revoke a regulation are not subject to the appeals process, but may be submitted to the Department at any time.

[45 FR 85448, Dec. 29, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 790—GENERAL ORDERS

Sec.
790.1 Advisory committees.
790.2 Conduct of business and practice in connection with export control matters.
790.3 Export control authority to be exercised by U.S. Department of Commerce Field Office Directors in the event of enemy attack on the United States.
790.4 Disclosure of license issuance and other information.
790.5 General order extending outstanding individual validated licenses for commodities. .
790.6 General order preventing the use of special licensing procedures for aircraft controlled by Iran.

Sec.
790.7 General order on exports
Libya.

AUTHORITY: Pub. L. 96-72, 93 Stat. U.S.C. app. 2401 *et seq.*), as amended Pub. L. 97-145 of December 29, 1981, Pub. L. 100-418 of August 23, 1988, and Pub. L. 99-64 of July 12, 1985; E.O. 12 July 12, 1985 (50 FR 28757, July 16, 19 Pub. L. 95-223 of December 28, 1977 U.S.C. 1701 *et seq.*); E.O. 12543 of January 1986 (51 FR 875, January 9, 1986).

SOURCE: 13th Gen. Rev. of Export Re 35 FR 9206, June 12, 1970. Redesignated 53 FR 37751, Sept. 28, 1988, unless oth wise noted.

§ 790.1 Advisory committees.

(a) *Purpose.* The purpose of this tion is to set forth the procedures criteria for the establishment and eration of technical advisory commi tees under the provisions of secti 5(h) of the Export Administration of 1979.

(b) *Technical Advisory Committ* Any producer of articles, materials, supplies including technical data other information which are subject export controls, or are being consi ered for such controls because of their significance to the national security the United States, may request th Secretary of Commerce to establish technical advisory committee, un the provisions of section 5(h) of th Export Administration Act of 1979, advise and assist the Department Commerce and other appropriate U.S. Government agencies or officials wi respect to questions involving: tech cal matters, worldwide availability a actual utilization of production tech nology, licensing procedures whi affect the level of export controls plicable to a clearly defined group of articles, materials, or supplies, i cluding technical data or other info mation, and exports subject to mul lateral controls in which the Unit States participates including propos revisions of any such multilateral co trols. If producers of articles, mater als, or supplies, including technic data, or other information which a subject to export controls because their significance to the national sec rity of the United States, wish a tra association or other representative submit a written request on the behalf for the appointment of a technical advisory committee, such request shall be submitted in accordance with the provisions of paragraph (b)(4) of this section.

(1) *Form and substance of requests.* Each request for the appointment of a technical advisory committee shall be submitted in writing to—Director, Office of Technology and Policy Analysis, P.O. Box 273, Washington, DC 20044. The request shall include:

(i) A description of the articles, materials, or supplies including technical data, in terms of a clear, cohesive grouping (citing the applicable Export Control Commodity Numbers where practicable);

(ii) A statement of the reasons for requesting the appointment of a technical advisory committee; and

(iii) Any information in support of any contention that may be made that the request meets the criteria set forth in paragraph (b)(2) of this section.

(2) *Consideration of request for establishment of a technical Advisory Committee.* The Department of Commerce will review all requests for the establishment of a technical advisory committee to determine if the following criteria are met: (i) That a substantial segment of the industry producing the specified articles, materials or supplies including technical data desires such a committee and (ii) that the evaluation of such articles, materials or supplies including technical data, for export control purposes is difficult because of questions involving technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures.

(3) *Determination of substantial segment of an industry.* In determining whether a substantial segment of any industry has requested the appointment of a technical advisory committee, the Department of Commerce will consider:

(i) The number of persons or firms requesting the establishment of a technical advisory committee for a particular grouping of commodities in relation to the total number of U.S. producers of such commodities; and

(ii) The volume of annual production by such persons or firms of each commodity and all technical data in the grouping in relation to the total U.S. production. Generally, a substantial segment of an industry (for purposes of paragraph (b)) shall consist of:

(A) Not less than 30 percent of the total number of U.S. producers of the commodities or technical data concerned; or

(B) Three or more U.S. producers who produce a combined total of not less than 30 percent of the total U.S. annual production, by dollar value of the commodities or technical data concerned; or

(C) Not less than 20 percent of the total number of U.S. producers of the commodities or technical data concerned; provided that the total of their annual production thereof is not less than 20 percent of the total U.S. annual production, by dollar value.

If it is determined that a substantial segment of the industry concerned has requested the establishment of a technical advisory committee concerning a specific grouping of commodities or technical data that the Department of Commerce determines difficult to evaluate for export control purposes, the Department of Commerce will establish and utilize the technical advisory committee requested.

(4) *Requests from trade associations or other representatives.* Requests from trade associations or other representatives of U.S. producers for the establishment of a Technical Advisory Committee must comply with the provisions of paragraphs (b) (1) through (3). In addition, in order to assist the Department in determining whether the criteria set forth in paragraph (b)(3) of this section have been met, a trade association or other representative submitting a request for the establishment of a technical advisory committee should include the following information: (i) The total number of firms in the particular industry, (ii) the total number of firms in the industry that have authorized the trade association or other representative to act in their behalf in this matter, (iii) the approximate amount of total U.S.

annual production by dollar value of the commodities or technical data concerned produced by those firms that have authorized the trade association or other representative to act in their behalf, and (iv) a description of the method by which authorization to act on behalf of these producers was obtained.

(5) *Nominations for membership on Technical Advisory Committee.* When the Department of Commerce determines that the establishment of a technical advisory committee is warranted, it will request nominations for membership on the committee among the producers of the commodities and from any other sources that may be able to suggest well-qualified nominees.

(6) *Selection of industry members of Committee.* Industry members of a technical advisory committee will be selected by the Department of Commerce from a list of the nominees who have indicated their availability for service on the committee. To the extent feasible, the Department of Commerce will select a committee balanced to represent all significant facets of the industry involved, taking into consideration such factors as the size of the firms, their geographical distribution, and their product lines. No industry representative shall serve on such committee for more than four consecutive years. The membership of a member who is absent from four consecutive committee meetings shall be terminated automatically.

(7) *Government members.* Government members of a technical advisory committee will be selected by the Department of Commerce from the agencies having an interest in the subject matter concerned.

(8) *Invitation to serve on committee.* Invitations to serve on a technical advisory committee will be sent by letter to the selected nominees. Acceptance or declination should also be conveyed by letter.

(9) *Election of chairman.* The Chairman of each technical advisory committee shall be elected by a vote of a majority of the members of the committee present and voting.

(c) *Charter.* (1) No technical advisory committee established pursuant to paragraph (b) of this section shall meet or take any action until an advisory committee charter has been filed with the Assistant Secretary for Administration of the Department of Commerce and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of the Department. Such charter shall contain the following information:

(i) The committee's official designation;

(ii) The committee's objectives and the scope of its activity;

(iii) The period of time necessary for the committee to carry out its purposes;

(iv) The agency or official to whom the committee reports;

(v) The agency responsible for providing the necessary support for the committee;

(vi) A description of the duties for which the committee is responsible and, if such duties are not solely advisory, a specification of the authority for such functions;

(vii) The estimated annual operating costs in dollars and man-years for such committee;

(viii) The estimated number and frequency of committee meetings;

(ix) The committee's termination date, if less than two years from the date of the committee's establishment; and

(x) The date the charter is filed.

(2) A copy of any such charter shall also be furnished to the Library of Congress, Exchange and Gift Division, Federal Advisory Committee Desk, Washington, DC 20540.

(d) *Meetings.* (1) Each technical advisory committee established under the provisions of the Export Administration Act, as amended, and § 790.1(b) of this part shall meet at least once every three months at the call of its chairman unless it is specifically determined by the Chairman, in consultation with other members of the committee, that a particular meeting is not necessary.

(2) No technical advisory committee may meet except at the call of its Chairman.

(3) Each meeting of a technical advisory committee shall be conducted in

accordance with an agenda approved by a designated Federal employee.

(4) No technical advisory committee shall conduct a meeting in the absence of a designated Federal employee who shall be authorized to adjourn any advisory committee meeting, whenever he determines adjournment to be in the public interest.

(e) *Public notice.* Notice to the public of each meeting of a technical advisory committee shall be issued at least twenty days in advance and shall be published in the FEDERAL REGISTER. The notice shall include the time and place of the meeting and its agenda.

(f) *Public attendance and participation.* (1) Any member of the public who wishes to do so may file a written statement with any technical advisory committee before or after any meeting of a committee.

(2) A request for an opportunity to deliver an oral tatement relevant to matters on the agenda of a meeting of a technical advisory committee will be granted to the extent that the time available for the meeting permits. A committee may establish procedures requiring such persons to obtain advance approval for such participation.

(3) Attendance at meetings of technical advisory committees will be open to the public unless it is determined pursuant to section 10(d) of the Federal Advisory Committee Act to be necessary to close all, or some portion, of the meeting to the public. A determination that a meeting or portion thereof be closed to the public may be made if all or a specific portion of a meeting of a technical advisory committee is concerned with matters set forth in section 552(b) of Title 5, U.S. Code.

(4) Participation by members of the public in open technical advisory committee meetings or questioning of committee members or other participants shall not be permitted except in accordance with procedures established by the committee.

(5) All persons wishing to attend an open technical advisory committee meeting should submit a written request for admission to the meeting in advance of the announced date of the meeting. Every effort will be made to accommodate all members of the public who wish to attend. Where limitations of space prevent the attendance of everyone who has requested admittance, members of the public will be admitted in the order in which their requests are received.

(g) *Minutes.* (1) Detailed minutes of each meeting of each technical advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued or approved by the advisory committee.

(2) The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(h) *Records.* (1) Subject to section 552 of Title 5, U.S. Code and Department of Commerce Administrative Order 205-12, "Public Information," and "Public Information" regulations issued by the Department of Commerce that are contained in 15 CFR Part 4, Subtitle A, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each technical advisory committee shall be available for public inspection and copying.

(2) Each technical advisory committee shall prepare at least once each year a report describing its membership, functions, activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, U.S. Code.

(3) Requests for records should be addressed to: Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, Telephone (202) 377-2593. Rules concerning the use of the Records Inspection Facility are contained in 15 CFR Part 4, Subtitle A, or may be obtained from the facility.

(i) *Compensation.* If the Department of Commerce deems it appropriate, a member of a technical advisory committee, upon request, may be reimbursed for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

(j) *Scope of advisory committee functions.* All technical advisory committees are limited to the functions set forth in their charters.

(k) *Duration of committees.* Each technical advisory committee shall terminate at the end of two years from the date the committee was established or two years from the effective date of its most recent extension, whichever is later. Committees may be continued only for successive two-year periods by appropriate action taken by the authorized officer of the Department of Commerce prior to the date on which such advisory committee would otherwise terminate. Technical advisory committees may be extended or terminated only after consultation with the committee.

(l) *Miscellaneous.* (1) Technical advisory committees established pursuant to paragraph (b) of this section, in addition to conforming to the provisions of this part, shall also conform to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Office of Management and Budget (OMB) Circular A-63 and OMB/Department of Justice Memorandum, "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," the applicable provisions of the Export Administrative Act of 1979, as amended, and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(2) Whenever the Department of Commerce desires the advice or assistance of a particular segment of an industry with respect to any export control problem for which the service of a technical advisory committee, as described in paragraph (b) of this section, is either unavailable or impracticable, an advisory committee may be established pursuant to the provisions of section 9 of the Federal Advisory Committee Act. Such committees will be subject to the requirements of the Federal Advisory Committee Act, Office of Management and Budget (OMB) Circular A-63 and OMB/Department of Justice Memorandum "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(3) Nothing in the provisions of this § 790.1 shall be construed to restrict in any manner the right of any person or firm to discuss any export control matter with the Department of Commerce or to offer advice or information on export control matters. Similarly, nothing in these provisions shall be construed to restrict the Department of Commerce in consulting any person or firm relative to any export control matters.

[13th Gen. Rev., Export Regs., Amdt. 66, 38 FR 20332, July 31, 1973, as amended at 42 FR 54530, Oct. 7, 1977; 45 FR 46067, July 9, 1980; 45 FR 59301, Sept. 9, 1980; 47 FR 15115, Apr. 8, 1982; 48 FR 20044, May 4, 1983; 51 FR 30632, Aug. 28, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13057, Mar. 30, 1989]

§ 790.2 Conduct of business and practice in connection with export control matters.

(a) *Exclusion of persons guilty of unethical conduct or not possessing required integrity and ethical standards*—(1) *Who may be excluded.* Any person, whether acting on his own behalf or on behalf of another, who shall be found guilty of engaging in any unethical activity or who shall be demonstrated not to possess the required integrity and ethical standards may be excluded from (denied) export privileges on his own behalf, or may be excluded from practice before the Bureau of Export Administration of the U.S. Department of Commerce on behalf of another, in connection with any export control matter, or both, as provided in Part 788 of this subchapter.

(2) *Grounds for exclusion.* Among the grounds for exclusion are the following:

(i) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of the Bureau of Export Administration of the U.S. Department of Commerce or any customs or post office official, to take any action with respect to the issuance of licenses or any other aspects of the administration of the Export Administration Act, whether or not in violation of any regulation;

(ii) Offering or making gifts or promises thereof to any such officer or employee for any other reason;

(iii) Soliciting by advertisement or otherwise the handling of business before the Bureau of Export Administration on the representation, express or implied, that such person, through personal acquaintance or otherwise, possesses special influence over any officer or employee of the Bureau of Export Administration.

(iv) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(v) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

(3) *Definition.* As used in this section, the terms "practice before the Bureau of Export Administration" and "appear before the Bureau of Export Administration" include:

(i) The submission on behalf of another of applications for export licenses or other documents required to be filed with the Bureau of Export Administration, or the execution of the same;

(ii) Conferences or other communications on behalf of another with officers or employees of the Bureau of Export Administration for the purpose of soliciting or expediting approval by the Bureau of Export Administration of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of the Bureau of Export Administration;

(iii) Participation on behalf of another in any proceeding pending before the Bureau of Export Administration; and

(iv) The submission to a customs official on behalf of another of a license or Shipper's Export Declaration or other export control document.

(4) *Proceedings.* All proceedings under this section shall be conducted in the same manner as provided in Part 388 of this subchapter.

(b) *Employees and former employees.* Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of Title 18, United States Code, sections 203, 205 and 207 (Pub. L. 87-849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.

[13th Gen. Rev. of Export Regs., 35 FR 9206, June 12, 1970, as amended at 45 FR 59301, Sept. 9, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13056, Mar. 30, 1989]

§ 790.3 Export control authority to be exercised by U.S. Department of Commerce Field Office Directors in the event of enemy attack on the United States.

(a) *Delegation to field office director.* In the event of an enemy attack on the United States, each Director of a U.S. Department of Commerce field office is authorized to exercise control over exports from the area assigned to him for purposes of this regulation.

(b) *Areas for which field office directors may control exports.* The area of jurisdiction assigned to each Director will be his area of jurisdiction at the time of an attack.

(c) *Orders from U.S. Department of Commerce.* The authorization set forth in paragraph (a) of this section shall be subject to any orders or directives transmitted from the U.S. Department of Commerce.

§ 790.4 Disclosure of license issuance and other information.

As provided by section 12(c) of the Export Administration Act of 1979, as amended, information obtained for the purpose of considering license applications and other information obtained by the U.S. Department of Commerce concerning license applications will not be made available to the public without the approval of the Secretary of Commerce. Shippers' Export Declarations also are exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with section 12(c) of the Export Administration Act of 1979 and section 301(g) of Title 13, United States Code.

[53 FR 20834, June 7, 1988. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 790.5 General order extending outstanding individual validated licenses for commodities.

Effective November 5, 1986 all outstanding individual validated licenses that were initially issued for one-year validity periods, except for short supply licenses issued under 15 CFR Part 777, are extended for 12 months from their original expiration dates. Also effective November 5, 1986 all reexport authorizations that were initially granted with one-year validity periods, except for reexport authorizations under 15 CFR Part 777, are extended for 12 months from their original expiration dates.

[51 FR 40159, Nov. 5, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 790.6 General order preventing the use of special licensing procedures for aircraft controlled by Iran.

Effective September 28, 1984, the special licensing procedures (including outstanding or future authorizations) described in Part 773 may not be used to provide aircraft parts and accessories (Export Control Commodity Numbers 1460, 4460, 5460, 6460, 1485, and 1501 (a), (b)(1) and (c)(1)) intended for aircraft (wherever located) owned, operated, or controlled by, or under charter or lease to Iran, or any of its nationals; except that for regularly scheduled civilian airlines, such procedures may be used up to (two weeks after publication). Except as stated above, effective (publication date), such procedures (including outstanding and future authorizations) may not be used for any shipments to Iran.

[49 FR 39155, Oct. 4, 1984. Redesignated at 53 FR 37751, Sept. 28, 1988]

§ 790.7 General order on exports involving Libya.

(a) Effective September 24, 1981 bulk licenses described in Part 373 may not be used to provide aircraft parts and accessories (Export Control Commodity Numbers 1460, 4460, 1485, 1501(a), (b)(1) and (c)(1)) to aircraft owned, operated, or controlled by, or under charter or lease to Libya or any of its nationals.

(b) Effective 12:01 a.m. Eastern Standard Time February 1, 1986, any authorization to export directly or indirectly from the United States to Libya contained in a validated export license (including both individual and special licenses) if the export is prohibited by the Libyan Sanctions regulations (31 CFR Part 550) is hereby revoked. Authorizations not revoked hereby continue in effect. Pursuant to § 772.9(f) of the Export Administration regulations, revoked licenses must be returned immediately upon revocation to Export Administration. Original licenses need not be returned where they include both authorizations that are revoked and those that continue in effect. In such cases, a copy of the license must be returned.

(c) Effective February 1, 1986, the Libyan Sanctions regulations issued by the Department of the Treasury impose restrictions on exports from the United States to Libya (31 CFR Part 550). To avoid duplication in licensing procedures, the Department of Commerce will not require exporters to obtain a separate license for exports from the United States to Libya subject to the Libyan Sanctions Regulations that are licensed by the Office of Foreign Assets Control of the Department of the Treasury. Effective February 1, the issuance of such license by the Department of the Treasury shall also constitute an authorization under the Export Administration regulations. Shipments to Libya from foreign countries that are subject to the provisions of 15 CFR Part 774 and §§ 776.12, 779.8 and 785.7 of the Export Administration regulations and that are not subject to the Libyan Sanctions regulations continue to require authorization from the Department of Commerce.

[46 FR 47067, Sept. 24, 1981, as amended at 51 FR 2354, Jan. 16, 1986. Redesignated at 53 FR 37751, Sept. 28, 1988]

PART 791—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.

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791.10 Removal of controls on less sophisticated items.

SUPPLEMENT NO. 1 TO PART 791—EVIDENCE OF FOREIGN AVAILABILITY

SUPPLEMENT NO. 2 TO PART 791—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [RESERVED]

AUTHORITY: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

SOURCE: 55 FR 32900, Aug. 13, 1990, unless otherwise noted.

§ 791.1 Introduction.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), the Under Secretary of Commerce for Export Administration directs the Office of Foreign Availability (OFA) in gathering and analyzing all the evidence necessary for the Secretary to determine foreign availability.

(b) *Scope.* This part applies only to the extent that items are controlled for national security purposes.

(c) *Types of programs.* There are two general programs of Foreign Availability:

(1) Foreign Availability to controlled countries. In this category are Denied License Assessments (see §§ 791.4 (b) and 791.7) and Decontrol Assessments (see §§ 791.4 (c) and 791.7).

(2) Foreign Availability to non-controlled countries. In this category are Denied License Assessments, Decontrol Assessments, and Evaluations of Eligibility for Expedited Licensing (see § 791.8).

(d) *Definitions.* The following are definitions of terms used in this part 791:

Allegation. See Foreign Availability Submission.

Applicant. Any person or firm as defined in § 770.2 of this subchapter.

Assessment. An evidentiary analysis that OFA conducts concerning the foreign availability of a given Item in light of the Assessment Criteria and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment Criteria. Statutorily established criteria that must be assessed for the Secretary to make a Determination with respect to foreign availability. They are "available-in-fact", "from a non-U.S. source", "in sufficient quantity so as to render the control ineffective", and "of comparable quality". (See § 791.6)

Available-in-fact. An Item is "Available-in-fact" to a country if it is produced within the country or if it may be obtained by that country from a third country. (Ordinarily, Items will not be considered available-in-fact to Non-controlled Countries that are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the U.S. pursuant to the agreement of the group known as COCOM, or pursuant to an agreement under Section 5(k) of the EAA ("COCOM" and "Cooperating Third Countries").) Items which are available only under a U.S. license for export or re-export are not considered Available-in-fact.

Claimant. Any applicant who makes a Foreign Availability Submission, excluding TACs.

Comparable Quality. An Item is of Comparable Quality to an Item Controlled under these regulations if it possesses the characteristics specified in the Commodity Control List for that Item and is alike in key characteristics that include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Controlled Countries. The Controlled Countries are: Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, Estonia, Hungary, Laos, Latvia, Lithuania, Mongolian People's Republic, North Korea, Poland, Romania, the USSR, and Vietnam, and the People's Republic of China (PRC).

Decontrol. Removal of validated license requirements under the Export Administration Regulations (EAR).

Decontrol Assessment. An Assessment of the foreign availability of an Item to a country or countries for purposes of determining whether Decontrol is warranted. Such Assessments may be conducted after the Department receives a Foreign Availability Submission or a TAC Certification, or on the Secretary's own initiative.

Denied License Assessment. A foreign availability Assessment conducted as a result of an Applicant's Allegation of foreign availability for an Item (or Items) for which the Department of Commerce has denied or has issued a letter of intent to deny an export license. If the Secretary finds foreign availability, the Department's approval of a validated license will be limited to the Items, countries, and quantities in the application.

Determination. The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. (See § 791.7.)

Expedited Licensing Procedure Eligibility Evaluation. An evaluation that OFA initiates for the purpose of determining whether an Item is eligible or the Expedited Licensing Procedure. (See § 791.8.)

Expedited Licensing Procedures. Under Expedited Licensing Procedures, the Office of Export Licensing (OEL) reviews and processes an individual validated license application for the export of an eligible Item to a Non-controlled Country within statutory time limits. Licenses are deemed approved unless the OEL complies with the statutory time limits See § 791.8.).

Foreign Availability Submission (FAS). An Allegation a Claimant makes of foreign availability, supported by Reasonable Evidence, and submits to OFA. (See § 791.5.)

Item. Any good, technical data or software.

Item Eligible for Non-Controlled Country Expedited Licensing Procedures. An Item is eligible for Expedited Licensing Procedures if it is described as such in Supplement No. 2 of part 791. (See § 791.8.)

National Security Override (NSO). A Presidential decision to maintain export controls on an Item notwithstanding its foreign availability as determined under the EAA. The President's decision is based on a determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, the President must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 791.7.)

Non-controlled Countries. Any country not listed as a Controlled Country.

Non-U.S. Source/Foreign Source. A person located outside the United States (as defined in § 770.2 of this subchapter) that makes available an Item.

Reasonable evidence. Relevant information that is credible.

Reliable Evidence. Relevant information that is credible and dependable.

Secretary. As used in this regulation, the Secretary refers to the Secretary of Commerce or designee.

Similar Quality. An Item is of Similar Quality to an Item that is controlled under the EAR if it is substantially alike in key characteristics that may include, but are not limited to: (1) function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Sufficient Quantity. The amount of an Item that would render the U.S. export control, or the denial of the export license in question, ineffective in achieving its purpose with respect to a particular country or countries. For a Controlled Country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC). A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the Export Administration Act on export control matters related to specific areas of controlled goods and technology.

TAC Certification. A statement that a TAC submits to OFA, supported by Reasonable Evidence, documented as in a FAS, that foreign availability to a Controlled Country exists for an Item that falls within the TAC's area of technical expertise.

[55 FR 32900, Aug. 13, 1990, as amended at 55 FR 40827, Oct. 5, 1990]

§ 791.2 Foreign availability described.

(a) *Foreign Availability.* Foreign Availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of an export license ineffective. For a Controlled Country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of goods or technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States (See sections 5(A) and 3(2)(A) of the EAA.)

(b) *Types of Foreign Availability.* There are two types of Foreign Availability:

(1) Foreign Availability to a controlled country; and

(2) Foreign Availability to a non-controlled country.

(See § 791.7 for delineation of the Foreign Availability assessment procedures, and § 791.6 for the criteria used in determining Foreign Availability)

§ 791.3 Foreign availability assessment.

(a) *Foreign Availability Assessment.* A Foreign Availability assessment is an evidentiary analysis that the Office of Foreign Availability (OFA) conducts to assess the foreign availability of a given item under the assessment criteria. OFA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that Foreign Availability exists, the Secretary will control the item or approve the license in question, unless the President exercises a National Security Override. (See § 791.7.)

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied License Assessment; and

(2) Decontrol Asssessment.

(c) *Expedited Licensing Procedures.* See § 791.8 for the evaluation of eligibility of an item for the Expedited Licensing Procedures.

§ 791.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant and TAC must submit a FAS or a TAC Certification to OFA. TACS are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied License Assessment.* An export license applicant whose export license the Department of Commerce has denied, or has issued a letter of intent to deny on national security grounds may request OFA to initiate a Denied License Assessment by submitting a FAS within 90 days after denial of the export license. As part of its Submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the validated license (or a request for reexport authorization) for the specific items, countries, and quantities listed on the application. The Denied License Assessment procedure, however, is not intended to trigger the removal of the U.S. export control on an item by incrementally providing a country with amounts that taken together would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied export license (or a denied request for re-export authorization) if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose with respect to a particular country or countries. In the case of a positive determination, the Secretary will determine whether a Decontrol Assessment is warranted. If so, then OFA will initiate a Decontrol Assessment.

(c) *Decontrol Assessment.* (1) Any claimant may at any time request OFA to initiate a Decontrol Assessment by making a FAS alleging foreign availability to any country or countries to OFA.

(2) A TAC may request OFA to initiate a Decontrol Assessment at any time by submitting a TAC Certification to OFA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a Decontrol Assessment.

(d) *OFA Mailing Address.* All Foreign Availability Submissions and TAC Certifications are to be submitted to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

§ 791.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All Foreign Availability Submissions must contain at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign Availability Submissions and TAC Certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the item allged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following: foreign manufacturers' catalogs, brochures, operation or maintenance manuals; articles from reputable trade and technical publications; photographs; depositions based on eyewitness accounts; and other credible evidence. Examples of supporting evidence are provided in Supplement No. 1 to this part 791.

(d) Upon receipt of a FAS or TAC Certification, OFA will review it to determine whether there is sufficient evidence to support the belief that Foreign Availability may exist. If OFA determines the FAS or TAC Certification is lacking in supporting evidence, OFA will seek additional evidence from appropriate sources, including the Claimant or TAC. OFA will initiate the assessment when it determines that it has sufficient evidence that Foreign Availability may exist. Claimant and TAC initiated assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria delineated in § 791.6 and the examples of evidence set forth in Supplement No. 1 to this part 791 when assembling supporting evidence for inclusion in the FAS or TAC Certification.

§ 791.6 Criteria.

OFA evaluates the evidence contained in a FAS or TAC Certification and all other evidence gathered in the assessment process in light of certain criteria that must be met before OFA can recommend a positive determination to the Secretary. In order to initiate an assessment, each FAS and TAC Certification should address each of these criteria. The criteria are statutorily prescribed and are:

(a) Available-in-fact;

(b) Non-U.S. source;

(c) Sufficient quantity; and

(d) Comparable quality.

The criteria are defined in § 791.1(d).

§ 791.7 Procedures.

(a) *Initiation of an assessment.* (1) Once OFA accepts a FAS or TAC Certification of Foreign Availability, OFA will notify the claimant or TAC that it is initiating the assessment.

(2) The Bureau of Export Administration will publish a FEDERAL REGISTER notice of the initiation of any assessment.

(3) OFA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which OFA has initiated an assessment. Each such department, agency, and contractor shall provide to OFA all relevant information that it has concerning the item. OFA will invite interested departments and agencies to participate in the assessment process (See § 791.7(e) for details).

(b) *Data gathering.* OFA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence set out in § 791.5 (b) and (c). As soon as Commerce initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* OFA conducts its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis for a recommendation for a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, OFA, on the basis of its analysis, recommends to the Secretary of Commerce that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. OFA's assessment upon which OFA based its recommendation accompanies the recommendation to the Secretary.

(2) OFA will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing export control, or denial of the license application in question would be ineffective in achieving its purpose. For a controlled country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States.

(3) The Secretary makes the determination of foreign availability on the basis of the OFA assessment and recommendation; the Secretary's determination takes into account the evidence provided to OFA, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all Decontrol and Denied License Assessments (pursuant to section 5(f)(3) of the EAA) initiated by a FAS, the Secretary makes a determination within four months of the initiation of the assessment, and so notifies the claimant. The Secretary submits positive determinations for review to appropriate departments and agencies.

(5) The deadline for determinations based on self-initiated and TAC-initiated assessments are different than the deadlines for claimant-initiated assessments (see § 791.7 (f)(2) and (f)(3)).

(e) *Interagency Review.* Commerce notifies all appropriate U.S. agencies and Departments upon the initiation of the assessment and invites them to participate in the assessment process. Commerce provides all interested agencies and departments an opportunity to review source material, draft analyses and draft assessments immediately upon their receipt or production. For claimant-initiated assessments, Commerce provides a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's determination of foreign availability. For self-initiated and TAC-initiated assessments, Commerce provides all interested agencies an opportunity to review and comment on the assessment.

(f) *Notification.* (1) No later than 5 months after the initiation of an assessment based on a FAS (claimant assessments), the Secretary informs the claimant in writing and submits for publication in the FEDERAL REGISTER a notice to the effect that:

(i) Foreign availability exists, and

(A) The requirement of a validated license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under COCOM, the U.S. Government will submit the proposed decontrol or approval of the license for COCOM review for a period of up to four months from the date of the publication of the determination in the FEDERAL REGISTER (The U.S. Government may remove the validated license requirement for exports to noncontrolled countries pending completion of the COCOM review process.); or

(ii) Foreign availability does not exist.

(2) For all TAC Certification Assessments, the Secretary makes a foreign availability determination within 90 days following initiation of the assessment. OFA prepares and submits a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the requirement of a validated export license; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) There is no statutory deadline for assessments initiated on the Secretary's own initiative or for the resulting determination. However, the Department will make every effort to complete such assessments and determinations promptly.

(g) *Foreign availability to controlled countries.* When the Secretary determines that a COCOM-controlled item is available to a controlled country and the President does not issue an NSO, OFA submits the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for COCOM approval of the license. The Department of State submits the proposal or the license to the COCOM review process. COCOM has up to four months for review of the proposal.

(h) *Foreign availability to non-controlled countries.* If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries to which it is found to be available, or approve the license in question, unless the President exercises a National Security Override.

(i) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (i)(7) of this section), an NSO is effective for six months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the six month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the Act to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated pursuant to section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the Act to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives will be notified of the initiation of the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Bureau of Export Administration will publish notices in the FEDERAL REGISTER of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the National Security Override;

(iii) A concise statement of the basis for the President's decision; and

(iv) An estimate of the economic impact of the decision.

(7) The six month effective period for an NSO may be extended up to an additional 12 months if prior to the end of the 6 months the President certifies to Congress that the negotia-

tions are progressing, and determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, the Department of Commerce will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, the Department of Commerce will decontrol the item by removing the requirement for a validated export license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, Commerce will remove the validated license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in Foreign Availability.* If OFA becomes aware of conditions, including new evidence, that affects a previous determination that foreign availability exists or does not exist, the Office of Foreign Availability may review the evidence. If the Office finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, the Office will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and the Bureau of Export Administration will publish a FEDERAL REGISTER notice of the determination.

§ 791.8 Eligibility for expedited licensing procedures for non-controlled countries.

(a) OFA determines the eligibility of an item for Expedited Licensing Procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) OFA will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a FAS; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC Certification, the Bureau of Export Administration will notify the claimant or TAC of the receipt and initiation of an evalution and publish a FEDERAL REGISTER notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for Expedited Licensing Procedures are:

(1) The item must be available-in-fact to the specified non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S. controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce makes a determination of foreign availability on the basis of the OFA evaluation and recommendation which takes into account the evidence the Secretaries of Defense, State, and other interested agencies provided to OFA and any other information that the Secretary considers relevant. The Secretary of Commerce will provide all interested agencies an opportunity to review and comment on the evaluation.

(f) Within 30 days of the receipt of the FAS or TAC Certification, the Bureau of Export Administration will publish the Secretary's determination in the FEDERAL REGISTER, inform the Office of Export Licensing that the item is/is not eligible for expedited licensing procedures to the stated countries, and, where appropriate, amend supplement No. 2 to part 791.

(g) Following completion of a self-initiated evaluation, the Office of Export Licensing will be notified of the Secretary's determination and where appropriate, supplement No. 2 of part 791 will be amended. (Items exported to countries listed in supplement No. 2 to part 791 will be licensed in accordance with the procedures in § 770.14 of this subchapter, except that the initial licensing action will be within 20 working days.)

(h) Foreign Availability Submissions and TAC Certifications to initiate an Expedited Licensing Procedure evaluation must be clearly designated on their face as a request for Expedited Licensing Procedure purposes, must specify the items, quantities and countries alleged eligible, and should be sent to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

§ 791.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures set forth in 15 CFR part 789. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability shall not be subject to appeal.

§ 791.10 Removal of controls on less sophisticated items.

Where the Secretary has decontrolled an item for foreign availability reasons, the Secretary will also remove national security controls on similar items that are controlled for national security reasons and whose functions, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that Department of Commerce has decontrolled for foreign availability reasons.

SUPPLEMENT NO. 1 TO PART 791—EVIDENCE OF FOREIGN AVAILABILITY

Below is a list of examples of evidence that the Office of Foreign Availability has found useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected.

Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A FAS should include as much evidence as possible on all four of the criteria listed below. OFA combines the submitted evidence with the evidence that it collects from other sources. OFA evaluates all evidence, taking into account factors that may include, but are not limited to: information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability of reasonableness of such evidence. OFA will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to OFA. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to OFA if the submitter cannot obtain a written memorandum from the source.

OFA will amend this informational list as it identifies new examples of evidence.

EXAMPLES OF EVIDENCE OF FOREIGN AVAILABILITY

The following are intended as examples of evidence that OFA will consider in evaluating foreign availability. OFA will evaluate all evidence according to the provisions in 791.7(c) in order for it to be used in support of a foreign availability determination. This list is illustrative only.

Available-in-Fact

- —Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);
- —Copies of sales receipts demonstrating sales to foreign countries;
- —The terms of a contract under which the item has been or is being sold to a foreign country;
- —Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;
- —Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;
- —Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);
- —An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;
- —Evidence of the presence of sales personnel or technical service personnel in a foreign country;
- —Evidence of production within a foreign country;
- —Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;

- —A copy of the export control laws or regulation of the source country which shows that the item is not controlled.
- —A catalog or brochure indicating the item is for sale in a specific country.

Foreign (Non-U.S.) Source

- —Names of foreign manufacturers of the item including, and if possible, addresses and telephone numbers;
- —A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;
- —A list of the components in the U.S. item and foreign item indicating model numbers and their sources;
- —A schematic of the foreign item identifying its components and their sources;
- —Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);
- —Evidence of indigenous technology, production facilities, and the capabilities at those facilities;
- —Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. export licensing requirements by the parts and Components provision (§ 776.12 of this subchapter).

Sufficient Quantity

- —Evidence that foreign sources have the item in serial production;
- —Evidence that the item or its products is used in civilian applications in foreign countries;
- —Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;
- —Evidence of foreign inventories of the item;
- —Evidence of excess capacity in a foreign country's production facility;
- —Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;
- —An estimate by a knowledgeable source of the foreign country's needs;
- —An authoritative analysis of the worldwide market (i.e., demand, production rate for the item for various manufactures, plant capacities, installed tooling monthly production rates, orders, sales and cumulative sales over 5-6 years).

Comparable Quality

- —A sample of the foreign item;
- —Operation or maintenance manuals of the U.S. and foreign items;
- —Records or a statement from a user of the foreign item;
- —A comparative evaluation, preferably in writing, of the U.S. and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;
- —A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;
- —Evidence of the interchangeability of U.S. and foreign items;
- —Patent descriptions for the U.S. and foreign items;
- —Evidence that the U.S. and foreign items meet a published industry, national, or international standard;
- —A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;
- —Evidence concerning the foreign manufacturers' corporate reputation.
- —Comparison of the U.S. and foreign end item(s) made from a specific commodity tool(s), technical data or device.
- —Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance and other pertinent factors.

Supplement No. 2 to Part 791—Items Eligible for Expedited Licensing Procedures—[Reserved]

PARTS 792—798 [RESERVED]

PART 799—COMMODITY CONTROL LIST AND RELATED MATTERS

Sec.
799.1 The Commodity Control List and how to use it.
799.2 Commodity interpretations.

Authority: Public Law 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985) and Pub. L. 100-418 of August 23, 1988; Pub. L. 95-223 of December 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

EDITORIAL NOTE: Part 399 was redesignated as Part 799 at 53 FR 37751, Sept. 28, 1988.

§ 799.1 The Commodity Control List and how to use it.

(a) *Commodity coverage.* The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), which includes all commodities subject to U.S. Department of Commerce export controls. The CCL does not include those commodities exclusively controlled for export by another department or agency of the U.S. Government. For example, arms, ammunition, and implements of war are controlled for export by the Office of Munitions Control, U.S. Department of State. See § 770.10 for a listing of exports controlled by other U.S. Government departments and agencies.

(b) *Commodity groups.* The commodities under BXA jurisdiction are grouped on the CCL under 10 general categories. Each CCL entry is preceded by a four-digit Export Control Commodity Number (ECCN) and a code letter. The first digit relates to the strategic level of control; the second digit identifies the Group to which the commodity belongs; and the remaining two digits identify related commodities within a Group. Within each group, the entries are numbered consecutively by the third and fourth digits.

Commodity group No.	Commodity groups	Commodity control list page No.
0	Metal-Working Machinery	CCL.
1	Chemical and Petroleum Equipment	CCL.
2	Electrical and Power-Generating Equipment.	CCL.
3	General Industrial Equipment	CCL.
4	Transportation Equipment	CCL.
5	Electronics and Precision Instruments	CCL.
6	Metals, Minerals, and Their Manufactures.	CCL.
7	Chemicals, Metalloids, Petroleum Products and Related Materials.	CCL.
8	Rubber and Rubber Products	CCL.
9	Miscellaneous	CCL.

Within the ten general categories, specific CCL entries define the commodities controlled to the country groups and individual destinations specified in the paragraph titled "Validated License Required" under each ECCN. See Supplement No. 1 to Part 770 for a listing of the countries included in each country group.

(c) *Embargo destinations.* Almost all CCL entries include Country Groups S and Z, embargo destinations, under the heading "Validated License Required." Generally, the last entry in each commodity category is a "basket" entry asserting control over exports to destinations in Country Groups S and Z of commodities that are not elsewhere specified in that commodity category. In a few instances, however, certain entries, or portions of entries, are excepted from the general embargo policy and are specifically identified. You may export the excepted commodities under General License *G-DEST.* Certain other General Licenses may also apply, *e.g.,* General License *GIFT.* With these exceptions, you may not export or reexport any commodity to a destination in Country Group S or Z:

(1) Unless you have filed an export license application (Form ITA-622P) or request to reexport (Form ITA-699P) with BXA, and

(2) Until BXA issues a validated export license or reexport approval covering your proposed transaction.

See general policy statements regarding embargo destinations in § 785.1 (Country Group Z) and § 785.7 (Country Group S).

(d) *All other destinations, except Canada.* (1) If you intend to export a commodity to a destination in Country Group Q, T, V, W or Y and that commodity is covered by a CCL entry that includes Q, T, V, W, or Y under the heading "Validated License Required," you must usually file an export license application or reexport request with BXA. BXA must then issue a validated export license or reexport authorization covering your proposed transaction before you make a shipment.

(2) If your commodity is covered by a CCL entry, but you intend to export it to a country that is *not* included in a country group for which there are controls, you may ship the commodity under General License *G-DEST,* provided that none of the parties involved is currently denied export privileges

(see Supplement No. 1 to Part 788) and the export is not restricted by the special licensing requirements summarized in paragraph (f)(4) of this section.

(3) You should review the General License provisions in Part 771 before filing an export license application or reexport request to see whether your shipment requires a validated license or if it may be shipped under a general license. For example, you may be able to export a small value shipment of a commodity included in a CCL entry to a destination in Country Group Q, T or V under General License *GLV*. In addition, one of the other, more specialized, General Licenses explained in Part 771 may apply.

(e) *Canada*. Canada is not included in any of the Country Groups, and you may export most commodities to Canada for consumption or use in that country without an export license. In the few instances where a validated license is required, Canada is specifically named in the CCL entry. See § 785.6 for a general policy statement regarding exports to Canada. Note also the special licensing requirements summarized in (f)(4) below.

(f) *How to use the CCL*. (1) *Identifying the proper CCL entry*. First, the exporter *must* attempt to identify which ECCN covers the commodity proposed for export. The general characteristics of the commodity will usually guide the exporter to the appropriate Commodity Group. Once the appropriate Commodity Group is identified, the particular characteristics and function of the equipment should be matched to a specific ECCN. The index to the CCL may also help to match a general description to a specific ECCN entry. All items subject to Commerce licensing jurisdiction are included on the CCL, either in a specific commodity listing or in an "other, n.e.s." entry at the end of each Commodity Group. The Bureau of Export Administration will respond to properly submitted requests for verification of the proper ECCN within ten working days after receipt of the request. To insure that the request will be acted upon expeditiously, it will be necessary for the requester to do the following:

(i) The requester must submit a recommended classification for the commodity(ies) and explain the reasons for this classification. This explanation must contain an analysis of the classified commodity(ies) in terms of the technical control parameters specified in the appropriate ECCN. If the requester cannot determine the appropriate classification, then the requester must explain the reasons for failing to recommend an appropriate classification. This explanation should include an identification of ambiguities or deficiencies in the regulations that precluded making a classification;

(ii) The requester must attach descriptive literature, brochures, technical papers or specifications that provide sufficient technical detail to enable BXA personnel to verify or correct the commodity classification;

(iii) The commodities to be classified must be clearly listed by model number in the request. No more than five commodities will be considered in a single request. Exceptions may be made on a case-by-case basis for several related products if the relationship between these products is satisfactorily substantiated and documented.

(iv) The request must be mailed to the following address: The Bureau of Export Administration, P.O. Box 273, Washington, DC 20044; and

(v) Request(s) must be clearly marked at the top of the first page and on the lower left-hand corner of the envelope "Commodity Classification Request".

Any request that omits essential information, or is otherwise incomplete will be returned to the requester specifying the reasons for the return.

(2) *Export control commodity number*. After you find the CCL entry, note the Export Control Commodity Number (ECCN). This is a four-digit number that must appear on your export license application or reexport request, if one is required. The four-digit number will be followed by a code letter. This code letter is a key to the documentation requirements of Part 775 of this title, and is used by many exporter as a data processing code to indicate the country group level of control for CCL entries. The

letters used and the respective country groups are:

Code letters	Country groups for which validated license is required
A	QSTVWYX (Multilaterally controlled to all destinations.) Only "A" commodities are subject to IC/DV procedure (see § 775.3).
B	QSTVWYZ (Unilaterally controlled to all destinations.)
C	QSWYZ and certain other countries.
D	QSWYZ only.
E	SWYZ.
F	SZ and certain other countries.
G	SZ only.
I	None.
M	Various (Country Group control level is governed by another entry on the CCL.)

(3) Country of destination and value of shipment. Once you locate the ECCN for a commodity you wish to export, you must determine if a validated export license is required for *the particular shipment*. Do this by referring to the paragraph titled "Validated License Required," and in some cases, to the paragraph titled "GLV $ Value Limit."

(i) If the code letter following the ECCN is A or B, and the country of destination is in Country Group T or V, you will need a validated export license if the value of the shipment exceeds the value shown under the heading "GLV $ Value Limit." (See § 771.5 for restrictions on the use of General License GLV.) However, if the shipment is to an eligible country and if the commodity meets the technical performance characteristics described in a designated Advisory Note that is listed in the paragraph titled "GFW Eligibility," you may ship under General License GFW (see § 771.23). The countries eligible for the GFW procedure are those destinations listed in Supplement No. 2 to Part 773 and any destination listed in Supplement No. 3 to Part 773 *except* Ethiopia, Lebanon, and Nicaragua. (Also see § 771.8 to determine if your shipment qualifies for export under General License G-COM.)

(ii) If the code letter following the ECCN is A and the country of destination is in Country Group Q, S, W, Y or Z, you will need a validated export license *regardless of the value of the shipment.*

(iii) If the code letter following the ECCN is B, C, D or E, and the country of destination is in Country Group S, W, Y or Z (or is specifically named under the heading "Validated License Required" for that CCL entry), a validated export license *is* required, regardless of the value of the shipment.

(iv) If the country of destination is in Country Group Q, a validated export license is required *unless* the code letter is E, F, G or I, or the shipment does not exceed the GLV $ value for Group Q shown under the "GLV $ Value Limit" heading for that CCL entry. The GLV $ value limit for Country Group Q is "O" unless stated otherwise under "GLV $ Value Limit." See § 771.5 for restrictions on the use of General License *GLV*.

(v) If the code letter following the ECCN is F or G, and the country of destination is in Country Group S or Z (or is specifically named under "Validated License Required"), you *will* need a validated export license, regardless of the value of the shipment.

(4) Special licensing requirements. Under certain circumstances, you may *not* export a commodity under a General License even though, from an examination of the CCL, it appears to meet the requirements for export under a General License. (You should review, in particular, Parts 776, 778, and 785.) Some examples of special restrictions are described below:

(i) You will need an individual validated export license for a commodity which could otherwise be shipped under general license if you know or have reason to know that the commodity will be used with nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 778.3.

(ii) [Reserved]

(iii) Many entries contain special instructions about additional validated license requirements that apply only to certain countries or consignees within country groups (*e.g.*, South African military and police). You are responsible for checking entries for these special controls before assuming that you can use General License G-DEST.

(g) *Unit of quantity.* You must enter the quantity in the units given for each commodity under the "UNIT" heading on your export license application. If a unit of quantity other than the one specified in the CCL is commonly used in the trade, you may enter the quantity in terms of that unit in addition to the required unit on your application. If a unit of weight or measure is given in the Unit paragraph, a shipping tolerance is allowed (see § 786.7).

(h) *Processing code.* For each ECCN on the Commodity Control List, a processing code, *i.e.*, CM, CS, EE, SS, or TE, appears after the heading "PROCESSING CODE." You must show a processing code on your application for export license or reexport request, since the Office of Export Licensing uses the codes to facilitate the internal routing and processing of export license applications. These processing codes stand for Chemicals and Materials (CM), Computer Systems (CS), Electronic Components and Instrumentation (EE), Short Supply (SS), and Transportation and Capital Equipment (TE). You may enter only those ECCNS that have the same processing code on a single application for export license. (See § 772.4(e) for complete information on the inclusion of related commodities on a single application.)

(i) *Reason for control.* The "Reason for Control" paragraph for each ECCN specifies the statutory basis under which that commodity is controlled. Reasons for control include:

National security
Short supply (resource assessment)
Foreign policy
Nuclear non-proliferation
Crime control (foreign policy)

In some cases, more than one reason for control is given for one entry. If commodities in a CCL entry are controlled for one reason to some countries, and for another reason to other countries, then the least comprehensive controls are explained. Also, all entries (except those showing "None" under "Validated License Required") are controlled for foreign policy reasons to Country Groups S and Z due to certain embargo programs. In addition, all entries having both a "V" under "Validated License Required" and "National security" under "Reason for Control" may be controlled for foreign policy reasons to Syria and the People's Democratic Republic of Yemen. You can determine if your proposed shipment to Syria or the People's Democratic Republic of Yemen will be reviewed for foreign policy purposes by referring to § 785.4(d) of the regulations. Applications involving entries having "National security" but not "Nuclear non-proliferation" under "Reason for Control" are subject to nuclear non-proliferation controls if the end-use or end-user is nuclear related. (See § 778.1) In some cases, different paragraphs in the "List" of sub-items of the CCL entry are controlled for different reasons. In these cases, the different controls are explained. (For example, see ECCN 1110A.)

(j) *The abbreviation "n.e.s.".* The abbreviation "n.e.s." appearing in various CCL entries means "not elsewhere specified." If a commodity you intend to export appears to be covered by a CCL entry and the commodity description carries the limitation "n.e.s." you should not use that CCL entry until you determine whether another CCL entry specifically covers that commodity.

(k) *Commodity description on application or reexport requests.* Various CCL entries include phrases such as "specify by name," "specify by name and model number," and "give full specification." BXA requires this information on export license applications or reexport requests in order to evaluate the proposed export. If you fail to provide the requested information, there may be a delay in processing, or BXA may return your application or reexport request without action.

(l) *CCL paragraph references used on applications or reexport requests.* In item 9(c) of your export license application or reexport request, specify following the ECCN the paragraph letter ((a), (b), etc.) of the list of sub-items of that ECCN that corresponds to the commodity you wish to export or reexport.

(m) *NATO countries.* The "Validated License Required" paragraph and other special notes in the CCL cite "NATO." The NATO countries are: Belgium, Canada, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom.

(n) *Software and technical data.* Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

NOTE: The foreign portion of this § 799.1 describes the CCL. For a more detailed explanation, refer to other parts of the Export Administration Regulations.

[47 FR 58124, Dec. 29, 1982, as amended at 48 FR 53068, Nov. 23, 1983; 49 FR 50609, Dec. 31, 1984; 50 FR 15868 Apr. 23, 1985; 50 FR 37116, Sept. 11, 1985; 50 FR 38512, Sept. 23, 1985; 50 FR 39993, Oct. 1, 1985; 51 FR 43726, Dec. 4, 1986; 52 FR 29177, Aug. 6, 1987; 52 FR 43853, Nov. 17, 1987; 52 FR 48810, Dec. 28, 1987. Redesignated at 53 FR 37751, Sept. 28, 1988 and amended at 54 FR 13055 and 13057, Mar. 30, 1989; 54 FR 49970, Dec. 4, 1989; 55 FR 3205, Jan 31, 1990; 55 FR 31823, Aug. 6, 1990]

SUPPLEMENT NO. 1 TO § 799.1—COMMODITY CONTROL LIST

GROUP 0—METAL-WORKING MACHINERY

NOTE: You need a validated export license to export or reexport technical data related to metal-working machinery to destinations in Country Groups Q, S, W, Y or Z. You may use General License GTDR for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations); *Provided*, That:

The technical data are not listed in paragraphs (c) or (d) of 779.4 of the regulations, and there are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

2018A Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war.

Controls for ECCN 2018A

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 776.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

Processing Code: TE.

Reason for Control: National security; foreign policy. Foreign policy controls include controls on specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 776.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

Special South Africa Controls: Commodities defined in ECCN 2018A are subject to the Republic of South Africa embargo policy, and no technical data relating to these commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Illustrative List of Specialized Machinery, Equipment, and Gear Controlled by ECCN 2018A

Machines and machine tools and implements or accessories, metal cutting and working, of the following description:

Armor plate drilling machines, other than radial drilling machines
Armor plate planing machines
Armor plate quenching presses
Centrifugal casting machines capable of casting tubes 6 feet (183 cm) or more in length, with a wall thickness of 2 inches (5 cm) and other
Gun barrel rifling and broaching machines, and tools therefor
Gun barrel rifling machines
Gun barrel trepanning machines
Gun boring and turning machines
Gun honing machines of 6 foot (183 cm) stroke or more
Gun jump screw lathes
Gun rifling machines
Gun straightening presses
Induction hardening machines for tank turret rings and sprockets
Jigs and fixtures and other metal-working implements or accessories of the kinds exclusively designed for use in the manufacture of firearms, ordnance, and other stores and appliances for land, sea, or aerial warfare
Small chambering machines
Small arms deep hole drilling machines and drills therefor
Small arms rifling machines
Small arms spill boring machines
Tank turret bearing grinding machines

ADVISORY NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment used to determine the safety data of explosives, as required by the International Convention on the Transport of Dangerous Goods (C.I.M.), articles 3 and 4 in Annex 1 RID, provided that such equipment will be used only by the railway authorities of current C.I.M. members, or by Government-accredited testing facilities in those countries, for the testing of explosives to transport safety standards, of the following description:

(a) Equipment for determining the ignition and deflagration temperatures;

(b) Equipment for steel-shell tests;

(c) Drophammers not exceeding 20 kg in weight for determining the sensitivity of explosives to shock;

(d) Equipment for determining the friction sensitivity of explosives when exposed to charges not exceeding 36 kg in weight.

1080A Specially designed equipment, tooling and fixtures for the manufacture or measuring of gas turbine blades or vanes; specially designed components and accessories therefor.

NOTE: For "specially designed software" for use of the equipment, components and accessories, see Supp. No. 3 to Part 779.

Unit: Report machines in "number"; parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Specially Designed Equipment Controlled by ECCN 1080A

(a) Blade or vane airfoil or root automatic measuring equipment;

(b) Precision vacuum investment casting equipment, including core-making equipment;

(c) Small-hole drilling equipment for producing holes having depths more than four times their diameter and less than 0.03 inch (0.76 mm) in diameter;

(d) Directional solidification casting equipment and directional recrystallization equipment;

(e) Segmented cast blade or vane bonding equipment;

(f) Integral blade-and-disc casting equipment;

(g) Blade or vane coating equipment, *except* furnaces, molten-metal baths and ion-plating baths;

(h) Ceramic blade or vane molding and finishing machines;

(i) Molds, cores and tooling for the manufacture and finishing of:

(i) Cast hollow turbine blades or vanes;

(i) Turbine blades or vanes produced by powder compaction;

(j) Composite metal turbine blade or vane molding and finishing machines; and

(k) Inertial blade or vane welding machines.

1081A Specially designed or modified equipment, tools, dies, molds and fixtures for the manufacture or inspection of aircraft, airframe structures or aircraft fasteners; specially designed components and accessories therefor.

NOTE: For "specially designed software" for the use of the equipment, components and accessories, see Supp. No. 3 to Part 779.

Unit: Report machines in "number"; parts and components in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Machinery Controlled by ECCN 1081A

(a) Equipment, tools, dies, molds or fixtures for:

(1) Hydraulic stretch forming:

(i) Whose machine motions or forces are digitally controlled or controlled by electrical analog devices; or

(ii) That are capable of thermal-conditioning the workpiece;

(2) Milling aircraft skins or spars *except if they do not present an improvement on machinery in production ten years preceding the year of the export;*

(b) Tools, dies, molds or fixtures for:

(1) "Diffusion bonding";

(2) "Superplastic forming";

(3) "Hot die forging";

(4) Direct-acting hydraulic pressing of aluminum alloys and titanium alloys;

(5) Manufacturing, inspecting, inserting or securing of specially designed high-strength aircraft fasteners.

NOTE: 1. For the definition of the processes and control of the metal-working manufacturing technologies mentioned in subparagraph (b), see § 779.4(d)(16).

1086A Specially designed or modified equipment, tools, dies, molds, fixtures and gauges for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines; specially designed components and accessories therefor.

NOTE: For "specially designed software" for the use of the equipment, components and accessories, see Supp. No. 3 to Part 779.

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1086A

(a) Equipment, tools, dies, molds, fixtures and gauges:

(1) For automated production inspection;

(2) For automated welding;

(b) Tools, dies, fixtures and gauges:

(1) For solid-state joining by inertial welding or thermal bonding;

(2) For manufacture and inspection of high-performance gas turbine bearings;

(3) For rolling specially configured rings such as nacelle rings;

(4) For forming and finishing turbine discs; and

(c) Compressor or turbine disc broaching machines.

NOTE: This paragraph (c) controls only broaching machines specially designed for the manufacture of aircraft or aircraft derived gas turbine engines, and not general purpose broaching machines specially adapted for that purpose.

1088A Gear making and/or finishing machinery as defined below, and specially designed parts and accessories therefor.

Controls for ECCN 1088A

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Gear Making and/or Finishing Machinery Controlled by ECCN 1088A

(a) Bevel gear making machinery:

(1) Gear grinding machinery (non-generating type);

(2) Other machinery capable of the production of bevel gears of module finer than 0.5 mm (diametral pitch finer than 48) and meeting a quality standard better than DIN 58405 Class 6 (if rated in AGMA or Admiralty standards and not rated in DIN 58405, AGMA 11 or Admiralty Class I shall be considered to be the equivalent of DIN 58405 (Class 6));

(b) Machinery capable of producing gears in excess of AGMA quality level 13 or equivalent (if not rated in AGMA standards, DIN 3963 Class 4 shall be considered equivalent to AGMA quality level 13).

NOTE: "Diametral pitch" of a gear is the ratio of the number of teeth to the number of inches in the pitch diameter. It indicates the number of teeth in the gear for each inch of pitch diameter. ("Pitch diameter is the diameter" of the pitch circle which is the circle through the pitch point having its center at the axis of the gear.) "Module" (British or metric) is the ratio of the pitch diameter in millimeters to the number of teeth. The larger the proportion of teeth to pitch diameter, the finer the diametral pitch. Example of diametral pitch: If a gear has a 1-inch pitch diameter and has 48 teeth, the ratio would be 48:1, or a 48 diametral pitch gear. Additional teeth in the same pitch diameter gear, *i.e.*, 49, would result in a finer diametral pitch; fewer teeth, *i.e.*, 47, would result in a gear of coarser diametral pitch. Examination of a gear making or finishing machine may not disclose whether it is capable of producing a gear of finer than 48 diametral pitch. If the exporter has no information on the ability of the machine to be exported for making gears of finer than 48 diametral pitch, he should obtain the information from the manufacturer or distributor.

Generating type geartooth grinding machines are those in which the grinding wheel and the gear are both power-driven for continuous circular motion while grinding, rather than an intermittent or indexing operation as with the non-generating type.

1091A "Numerical control units", "numerically controlled" machine tools, components, specially designed parts and sub-assemblies, "specially designed software" and technical data.

Controls for ECCN 1091A

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

Technical Data and Software: GTDR is available for Country Groups T and V, except the People's Republic of China and Afghanistan, for technical data described in (c)(1) through (c)(10) of the list below.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security, nuclear non-proliferation.

Special Licenses Available: See part 773 of this subchapter.

TECHNICAL NOTES: 1. For the purpose of this ECCN, machine tools for removing, cutting or spark eroding metal, ceramics or composites are categorized as follows:

(a) Machine tools for turning, including:

(1) Horizontal turning machines;

(2) Vertical turning machines;

(3) Turning centers, with or without milling or grinding options;

(4) Machines for generating optical quality surfaces;

NOTE: For non-"numerically controlled" machine tools capable of generating optical quality surfaces, see ECCN 1370A.

(b) Machine tools for milling, including:

(1) Boring machines;

(2) Boring-milling machines;

(3) Milling machines;

(4) Machining centers, with or without turning or grinding options;

(5) Machine tools for routing;

(c) Machine tools for grinding with or without milling or turning options, including:

(1) Jig grinding machines;

(2) Contour grinding machines;

(3) Tool and cutter grinding machines;

(d) Machine tools using electric discharge for machining;

(e) Other machines tools, as follows:

(1) Water and other liquid jet machines;

(2) Electron beam cutting machines; *or*

(3) Laser cutting machines.

NOTE: For broaching machines, see ECCNs 1080A, 1086A and 1088A.

2. Not counted in the total number of contouring axes are secondary parallel contouring axes, e.g., W-axis on horizontal borning mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis.

3. Axis nonemclature shall be in accordance with International Standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

NOTE: Rotary axes do not necessarily have to rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

List of Commodities Controlled by ECCN 1091A

(a) "Numerical control" units for machine tools, having any of the following characteristics, and "specially designed software" and specifically designed components therefor:

NOTE: "Software" (including documentation) for "numerical control" units that may be exported under General License GTDR must be:

(a) In machine executable form only:

(b) Limited to the minimum necessary for the use (i.e., installation, operation and maintenance) of these units.

(1) More than three interpolating axes can be coordinated simultaneously for "contouring control"; *or*

(2) Two or three interpolating axes can be coordinated simultaneously for "contouring control"*and* one or more of the following conditions are fulfilled:

(i) The smallest programmable increment, i.e., the input resolution, for any linear axis is less than 0.001 mm;

NOTE: In case of units with cnly two linear axes one of them may have a smallest programmable increment of less than 0.001 mm but not less than 0.0005 mm.

(ii) Interpolation of third order or higher is possible (e.g., spline or involute interpolation);

(iii) Word size of more than 32 bit (excluding parity bits);

(iv) Capable of "real-time processing" of data to modify, during the machining operation, tool path, feed rate and spindle data by either:

(A) Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

(B) "Adaptive Control" with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process;

(v) Capable of receiving directly (online) and processing computer aided design (CAD) data for internal preparation of machine instructions.

NOTES: 1. This sub-paragraph does not control "numerical control" units, if they are either:

(a) Modified for *and* incorporated in machines not described in any ECCN on this List; *or*

(b) Specially designed for machines not described in any ECCN on this List.

2. For "digital computers" not "embedded" in numerical control" units, see ECCN 1565A.

3. This sub-paragraph controls "numerical control" units that, according to the manufacturer's technical specifications, are capable, without modification, of accepting additional boards that would permit increasing the number of interpolating axes, which can be coordinated simultaneously for "contouring control," above the control levels, even if they do not contain these additional boards.

(b) Machine tools, as follows, for removing, cutting or spark eroding metals, ceramics or composites:

(1) Machine tools for turning that:

(i) According to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled by paragraph (a), even when not equipped with such units at delivery;

(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

(iii) Have one or more of the following characteristics:

(A) Two or more contouring rotary axes;

(B) "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);

(C) "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);

(D) The "positioning accuracies," with all compensations available, are better than:

(*1*) Along any linear axis regarding overall positioning:

(*i*) 0.006 mm for a total length of axis travel L equal to or shorter than 500 mm;

(*ii*) (0.006 + 0.001 × (L − 500)/500) mm if L is longer than 500 mm and shorter than 5,500 mm;

(*iii*) 0.016 mm if L is equal to or longer than 5,500 mm;

(*2*) Of any rotary axis 0.001°;

(2) Machine tools for milling that:

(i) According to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled by paragraph (a), even when not equipped with such units at delivery;

(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

(iii) Have one or more of the following characteristics:

(A) Two or more contouring rotary axes;

(B) One or more contouring "tilting spindles";

(C) "Run out" (out-of-true running) in one revolution of the spindle less (better) than $2 \times D \times 10^{-5}$ mm total indicator reading (TIR) where D equals the diameter of the axis in mm;

(D) The "positioning accuracies", with all compensations available, are better than:

(*1*) Along any linear axis regarding overall positioning:

(*i*) 0.006 mm in case none of the axes exceeds a total length of axis travel L of 650 mm;

(*ii*) If the total length of axis travel L of any axis is longer than 650 mm, 0.008 mm or (0.008 + 0.0015 × (L − 500)/500) mm whichever is higher, for all axes up to 5,500 mm of travel; *or*

(*iii*) 0.023 mm for any axis the total length L of which is equal to or longer than 5,500 mm;

(*2*) Of any rotary axis 0.001°;

(E) A motor power of any spindle of more than 75 kW;

(3) Machine tools for grinding that:

(i) According to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled by paragraph (a), even when not equipped with such units at delivery;

(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

(iii) Have one or more of the following characteristics:

(A) Two or more contouring rotary axes;

(B) One or more contouring "tilting spindles";

(C) "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);

(D) The "positioning accuracies", with all compensations available, are better than:

(*1*) Along any linear axis regarding overall positioning:

(*i*) 0.004 mm for a total length of axis travel L equal to or shorter than 300 mm;

(*ii*) (0.004 + 0.001 × (L − 300)/300) mm if L is longer than 300 mm and shorter than 3,300 mm;

(*iii*) 0.014 mm if L is equal to or longer than 3,300 mm;

(*2*) Of any rotary axis 0.001°;

NOTE: This sub-paragraph does not control tool or cutter grinding machines having all of the following characteristics:

(a) No more than four axes that can be coordinated simultaneously for "contouring control";

(b) No more than two rotary axes that can be coordinated simultaneously for "contouring control";

(c) "Run out" (out-of-true running) in one revolution of the spindle more (worse) than 0.0008 mm total indicator reading (TIR);

(d) The "positioning accuracies", with all compensations available, are not better than:

(1) 0.004 mm along any linear axis regarding overall positioning;

(2) Of any rotary axis 0.001°; *and*

(e) A maximum slide travel along any axis of less than 200 mm;

(4) Electrical discharge machines (EDM) of the wire feed type that have five or more contouring axes and that are capable of being equipped with:

(i) "Numerical control" units controlled by paragraph (a) above; *or*

(ii) Electronic controllers controlled by ECCN 1391A (b);

(5) Electrical discharge machines (EDM) of the non-wire type that have two or more contouring rotary axes and that can be equipped with:

(i) "Numerical control" units controlled by paragraph (a) of this ECCN 1091A even when not equipped with such units at delivery; *or*

(ii) Electronic controllers controlled by ECCN 1391A(b);

(6) Machine tools for removing metals, ceramics or composites:

(i) By means of:

(A) Water or other liquid jets, including those employing abrasive additives;

(B) Electron beam; *or*

(C) "Laser" beam; and

(ii) Having all of the following characteristics:

(A) According to the manufacturer's technical specifications, they can be equipped with "numerical control" units controlled by paragraph (a), even when they are not equipped with such units at delivery; *and*

(B) They have two or more rotary axes that:

(*1*) Can be coordinated simultaneously for "contouring control"; *and*

(*2*) Have a "positioning accuracy" of better than 0.01 degree of arc;

NOTES: 1. Machines that are controlled by their number of contouring axes are not excluded from control even if the numerical control unit attached to the machine limits it to the allowed number of simultaneously coordinated contouring axes.

2. Machine tools that are capable of performing more than one type of machining (e.g., a turning/milling center) are controlled if they meet or exceed the criteria set out for one or more of the types of machining which they are capable of performing.

3. The number of axes on a machine tool that is equipped with the necessary mechanical and electrical interfaces for an optional rotary axis is to be counted as if the machine is equipped with such an axis.

(c) Technical data for:

(1) The development of "numerical control" units described in paragraph (a) above;

(2) The production of "numerical control" units, having either of the following characteristics:

(i) Controlled by paragraph (a) above; *or*

(ii) Containing a microprocessor with:

(A) A word length of 32 bit; *and*

(B) A bus architecture for 32 bit;

(3) The development of "numerically controlled" machine tools described in paragraph (b) above;

(4) The production of "numerically controlled" machine tools, having any of the following characteristics:

(i) Controlled by paragraph (b) above; *or*

NOTES: This does not exclude from control technical data for the production of "numerically controlled" machine tools containing tilting tables if that technical data is the same as that for such machine tools when containing "tilting spindles".

(ii) A "positioning accuracy" along any linear axis of better than 20 micrometer;

(5) The development of components described in paragraphs (d) and (e) below;

(6) The production of components or sub-assemblies, having any of the following characteristics:

(i) Controlled by paragraphs (d) or (e)(2) below; *or*

NOTE: For the control status of the production equipment for printed circuit boards, see ECCN 1355A.

(ii) Not controlled by paragraphs (d)(2) or (d)(3) below;

(7) The development of interactive graphics as an integrated part in "numerical control" units for preparation or modification of part programs;

(8) The development of generators of machine tool instructions (e.g., part programs) from design data residing inside "numerical control" units;

(9) The incorporation of expert systems for advanced decision support of shop floor operations;

(10) Technical data for the development of "flexible manufacturing units" used with the "software" controlled by paragraph (b)(5)(v) in the

"List of Software" in Supplement No. 3 to part 779;

(d) Components and specially designed parts, as follows, for machine tools controlled by paragraph (b):

(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, with "run-out" (out-of-true running) less than:

(i) 0.0008 mm total indicator reading (TIR also peak-to-peak) for machine tools for turning or grinding; *or*

(ii) $2 \times D \times 10^{-5}$ mm total indicator reading (TIR also peak-to-peak), where D equals the diameter of the axis in mm, for machine tools for milling;

(2) Linear position feedback units, e.g., inductive type devices, graduated scales, laser or infrared systems having, with compensation, an overall "accuracy" better than $\pm (0.0015 + L \times 10^{-6})$ mm, L equal the effective length in mm of the linear measurement;

(3) Rotary position feedback units, e.g. inductive type devices, graduated scales, laser or infrared systems having, with compensation, an "accuracy" better than ± 0.00025° of arc;

(4) Slide way assemblies consisting of a minimal assembly of ways, bed and slide with all of the following characteristics:

(i) A yaw, pitch or roll of less than 2 seconds of arc, total indicator reading (reference: ISO/DIS 230-1);

(ii) A horizontal straightness of less than 4 micrometer; *and*

(iii) A vertical straightness of less than 4 micrometer;

(5) Ball screws, having all of the following characteristics (reference: ISO/DIS 3408-3):

(i) Sum of tolerance of mean travel deviation (e) and half the travel variation (V_u) less than $(0.0025 + 5 \times 10^{-6} \times L)$ mm, where L is the useful travel in mm of the ball screw;

(ii) Tolerance of travel variation (V300) within 300 mm travel of the ball screw less than 0.004 mm;

(iii) "Run-out" (out-of-true running) of the journal diameter related to the screw shaft outer diameter less than 0.005 mm TIR (peak-to-peak) at an axial distance of 3 or more times the screw shaft outer diameter from the end of the journal;

(6) Single point diamond cutting tool inserts having all of the following characteristics:

(i) A flawless and chip-free cutting edge when magnified 400 times in any direction;

(ii) A cutting radius out-of roundness less than 0.002 mm total indicator reading (TIR, also peak-to-peak); *and*

(iii) A cutting radius between 0.1 and 5.0 mm;

(7) Linear induction motors used as drives for slides having all the following characteristics:

(i) A stroke longer than 200 mm for linear slides;

(ii) A nominal force rating above 6 N; *and*

(iii) A minimal controlled incremental movement less than 0.001 mm for linear motion;

(e) Specially designed components or sub-assemblies, as follows, capable of upgrading, according to the manufacturer's specifications, "numerical control" units, machine tools or feed-back devices to or above the levels controlled in paragraphs (a), (b), (d)(2) or (d)(3):

(1) Printed circuit boards with mounted components and "software" therefor;

(2) "Compound rotary tables";

NOTE: For "sensors", see ECCN 1391A.

TECHNICAL NOTE: Definitions of terms:

Accuracy—Usually measured in terms of inaccuracy, defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

Adaptive control—A control system that adjusts the response from conditions detected during the operation (Ref. ISO 2806-1980).

Camming (axial displacement)—Axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (see ISO 230 Part 1-1986, paragraph 5.63);

Compound rotary table—A table allowing the workpiece to rotate and tilt about two non-parallel axes, which can be coordinated simultaneously for "contouring control".

Contouring control—Two or more "numerically controlled" motions operating in accordance with instructions that specify the next required position and the required feed rates to that position. These feed rates are varied in relation to each other so that ed contour is generated (Ref. ISO 2806-80).

Numerical control—The automatic control of a process performed by a device that makes use of numeric data usually introduced as the operation is in progress (Ref. ISO 2382).

Positioning accuracy—Of “numerically controlled” machine tools are to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

(a) Test conditions (ISO/DIS 230/2, paragraph 3):

(1) For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

(2) The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

(3) Accuracy of measuring equipment for the measurements shall be at least 4 times more accurate than the expected machine tool accuracy;

(4) Power supply for slide drives shall be as follows:

(i) Line voltage variation shall not be greater than ±10 percent of nominal rated voltage;

(ii) Frequency variation shall not be greater than ±2 Hz of normal frequency;

(iii) *Lineouts* or interrupted service are not permitted.

(b) Test Program (ISO/DIS 230/2, paragraph 4);

(1) Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

N.B.: In case of machine tools that generate optical quality surfaces the feed rate shall be equal to or less than 50 mm per minute;

(2) Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

(3) Axes not being measured shall be retained at mid travel during test of an axis.

(c) Presentation of test results (ISO/DIS 230/2, paragraph 2):

The results of the measurements must include:

(1) “positioning accuracy” (A); *and*

(2) The mean reversal error (B).

Real-time processing—Processing of data by an electronic computer in response to an external event according to time requirements imposed by the external event.

Run out (out-of-true running)—Radial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle axis at a point on the external or internal revolving surface to be tested (see ISO 230 Part 1-1986, paragraph 5.61);

Tilting spindle—A tool holding spindle which alters, during the machining process, the angular position of its center line with respect to any other axis.

ADVISORY NOTE: 1. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of turning machines controlled by paragraph (b)(1) provided:

(a) They are not intended for use in nuclear related activities; *and*

(b) They have all the following characteristics:

(1) Only two axes which can be coordinated simultaneously for “contouring control”;

(2) The “positioning accuracy”, with all compensation available, is not better than 2 micrometer per 300 mm of travel;

(3) Geometric alignment of the axes, parallel or perpendicular to each other not better than 1 micro- meter per 300 mm of travel;

(4) Slide travel in both axes not longer than 400 mm.

(5) “Run out” (out-of-true running) in one revolution of the spindle more (worse) than 0.0004 mm total indicator reading (TIR); *and*

(6) “Camming” (axial displacement) in one revolution of the spindle more (worse) than 0.0004 mm total indicator reading (TIR);

ADVISORY NOTE 2. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of technical data for the production of “numerical control” units not controlled by paragraph (a) of ECCN 1091A which contain a microprocessor with:

(a) A word length of 32 bit; *and*

(b) A bus architecture for 32 bit.

ADVISORY NOTE 3. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of technical data for the production of machine tools not controlled by paragraph (b) with a “positioning accuracy” better than 20 micrometer.

ADVISORY NOTE 4 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of “numerical control” units controlled by paragraph (a) having both of the following characteristics, and specially designed components and “specially designed software” therefor:

(a) Four interpolating axes can be coordinated simultaneously for “contouring control”; *and*

(b) Not controlled by paragraph (a)(2)(i) to (a)(2)(v) of this ECCN 1091A.

ADVISORY NOTE 5 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of machine tools controlled by paragraph (b)(2) having all of the following characteristics:

(a) Along any linear axis that is longer than 650 mm, the "positioning accuracies", with all compensations available, are equal to or more (worse) than:

(1) 0.006 mm for a total length of axis travel L equal to or shorter than 300 mm;

(2) (0.006 + 0.002 × (L−300)/300) mm if L is longer than 300 mm and equal to or shorter than 680 mm;

(3) (0.008 + 0.0015 × (L−500)/500) mm if L is longer than 680 mm and shorter than 5,500 mm; *or*

(4) 0.023 mm if L is equal to or longer than 5,500 mm; *and*

(b) Not controlled by paragraphs (b)(2)(iii)(A), (b)(2)(iii)(C) or (b)(2)(iii)(D)(*2*) of this ECCN 1091A.

5091F "Numerically controlled" machine tools not controlled by ECCN 1091A.

Controls for ECCN 5091F

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $5,000 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to Part 778; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

List of Commodities Controlled by ECCN 5091F

Numerically controlled machine tools for turning that, according to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled for export under ECCN 1091A (even if not equipped with such units at the time of delivery) and that have:

(a) Two or more axes that can be coordinated simultaneously for contouring control; and

(b) One or more of the following characteristics:

(1) Two or more contouring rotary axes;

(2) "Run out" (out-of-true running) in one revolution of the spindles less (better) than 0.0008 mm total indicator reading (TIR);

(3) "Camming" (axial displacement) in one revolution of the spindle les (better) than 0.0008 mm total indicator reading (TIR);

(4) The "positioning accuracies", with all compensations available, ar better than:

(i) Along any linear axis regardin overall positioning:

(A) 0.012 mm for a total length o axis travel L equal to or shorter tha 500mm;

(B) (0.012 + 0.001 × (L−500)/500) mm if L is longer than 500 mm an shorter than 5,500 mm;

(C) 0.022 mm if L is equal to o longer than 5,500 mm;

(ii) Of any rotary axis 0.002.

4094B Mandrels and bellows forming die

Controls for ECCN 4094B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ, and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Mandrels and Bellows Forming Dies Contr by ECCN 4094B

(a) Mandrels or forming dies, tw piece cylindrical having a single in dented circumferential convolution bi sected by the two halves and havin the following dimensions:

(1) 3 in. to 16 in. outside diameter;

(2) ½ in. or more in length; and

(3) Single convolution depth mor than 2 mm.

1099A Dimensional inspection system devices, and specially designed comp nents and "specially designed sof ware" therefor.

Controls for ECCN 1099A

Unit: Report machines in "number"; parts and accessories in "value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Coun try Groups T & V, except $0 for the

People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; nuclear non-proliferation. Nuclear non-proliferation controls apply only to items described in paragraphs (c) or (d) of the List below. There are no controls for nuclear non-proliferation reasons on exports to those countries listed Supp. No. 2 or 3 to Part 773.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1099A

(a) Manual dimensional inspection machines with two or more axes, and "measurement uncertainty" equal to or less (better) than (0.25+L/1000) micrometer in any axis (L measured length in mm).

NOTE: Paragraph (a) of this ECCN 1099A does not control optical comparators.

(b) Computer controlled or "numerically controlled" dimensional inspection machines having both of the following characteristics:

(1) Two or more axes; *and*

(2) A one dimensional (ID) length "measurement uncertainty" equal to or less (better) than (1.5+L/1000) micrometer tested with a probe of an "accuracy" of less (better) than 0.2 micrometer (L measured length in mm) (Ref: VDI/VDE 2617 part 1 and 2);

(c) Linear and angular displacement measuring devices, as follows:

(1) Linear measuring instruments having any of the following characteristics:

(i) Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

(ii) Linear voltage differential transformer systems having both of the following characteristics:

(A) "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

(B) Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

(iii) Measuring systems that have both of the following characteristics:

(A) Contain a "laser"; *and*

(B) Maintain for at least 12 hours, over a temperature range of ± 1 K around a standard temperature and at a standard pressure:

(*1*) A "resolution" over their full scale of ± 0.1 micrometer or better; *and*

(*2*) With a "measurement uncertainty" equal to or less (better) than 0.2+L/2000) micrometer (L measured length in mm);

(2) Angular measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

NOTE: Paragraph (c) of this ECCN 1099A does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

(d) Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

(1) "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; *and*

(2) "Angular position deviation" equal to or less than 0.02°.

NOTE: "Specially designed software" for the systems described in paragraph (d) of this ECCN 1099A includes "software" for simultaneous measurements of wall thickness and contour.

Technical Notes: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine is controlled if it exceeds the control threshold anywhere within its operating range.

3. The probe used in determining the "measurement uncertainty" of a dimensional inspection system shall be as described in VDI/VDE 2617 part 2.3.4.

4. All parameters or measurement values in this ECCN 1099A represent permissible positive and negative deviations from the target value, i.e., not total band.

ADVISORY NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of equipment controlled by paragraph (c)(1) of this ECCN 1099A to civil end-users not engaged in aerospace or nuclear activities.

(For "numerical control" units, see ECCN 1091A(a).)

6099G Other metal-working machinery, n.e.s.; and parts and accessories, n.e.s.

Controls for ECCN 6099G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

GROUP 1—CHEMICAL AND PETROLEUM EQUIPMENT

NOTE: You need a validated export license to export or reexport technical data related to chemical and petroleum equipment to destinations in Country Groups Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destination in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations, *Provided,* That:

(a) The technical data are not listed in paragraph (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

1110A Equipment for the production of liquid fluorine, and specially designed components therefor.

Controls for ECCN 1110A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Commodities defined in paragraph (a) below are controlled for national security; (b) and (c) are controlled for national security and nuclear non-proliferation. There are no controls for nuclear non-proliferation reasons to those countries listed in Supp. No. 2 or 3 to Part 773.

Special Licenses Available: None for commodities defined in paragraph (b). See Part 773 for special licenses available for other commodities defined by ECCN 1110A.

List of Gas Liquefying Equipment Controlled by ECCN 1110A

(a) Equipment for the production of liquid hydrogen, *except plants with a capacity of less than 1½ tons per 24-hour day and not designed for, or capable of, the production of hydrogen slush;*

(b) Equipment for the production of liquid fluorine; and

(c) Specially designed parts and accessories therefor.

2118A Equipment for the production of military explosives and solid propellants.

Controls for ECCN 2118A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Australia, Japan, New Zealand, and members of NATO (except that there is no limit on exports to Canada); $0 for all other destinations.

Commodities Not Eligible for General License GCT: Production equipment for the production or rocket propellants.

Processing Code: TE.

Reason for Control: National security, foreign policy. Foreign policy controls apply to production equipment for the production of rocket propellants.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

Special South Africa Controls: Commodities defined in paragraphs (a) and (b) of ECCN 2118A are subject to the Republic of South Africa embargo policy and no technical data relating to those commodities may be exported under General license *GTDR* to any consignee in the Republic of South Africa.

List of Equipment Controlled by ECCN 2118A

(a) Complete installations;

(b) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants); or

(c) Nitrators, continuous types; and

(d) Specially designed parts and accessories therefor.

4118B Batch mixers specially designed or modified for mixing solid propellants with a working capacity of 30 U.S. gallons (114 liters) or more, according to the manufacturer's technical specifications, or a total (volumetric) capacity of 45 U.S. gallons (170 liters) or more, and specially designed components therefore.

Controls for ECCN 4118B

Unit: Report equipment in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0.

Processing Code: TE.

Reason for Control: Foreign Policy. Foreign policy controls apply to this entry for nuclear weapons delivery purposes.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada [See § 779.4(d)(20) of this chapter].

2120A Cryogenic equipment.

Controls for ECCN 2120A

Unit: Report equipment in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Commodities defined in paragraphs (a), (b)(1) and (b)(2), and (b)(4) of this section are controlled for national security; (b)(3) and (c) are controlled for national security and nuclear non-proliferation. The countries to which commodities in (b)(3) are not controlled for nuclear reasons are those listed in Supp. Nos. 2 or 3 to Part 773.

Special Licenses Available: None for commodities defined in paragraph (b)(3). See Part 773 for special licenses available for other commodities defined by ECCN 2120A.

List of Cryogenic Equipment Controlled by ECCN 2120A

(a) Equipment designed for maintaining an ambient temperature below −274° F (−170° C):

(1) Designed for use in marine, airborne, or space applications, or

(2) Ruggedized for mobile ground use;

(b) Electrical, magnetic, and electronic equipment or components, and electrical conductors, specially designed for operation continuously or discontinuously at ambient temperatures below −274° F (−170° C), as follows:

(1) Superconductive metals, alloys, compounds, composites, and intercalate materials, *except:*

(i) *Superconductive wire having a filament cross-sectional area of 4.42×10^{-3}sq. mm. (or 75 micron diameter) or greater; or*

(ii) *Superconductive niobium-titanium wire having a filament cross-sectional area of 1.26×10^{3} sq. mm. (or 40 microns diameter) or greater in a copper matrix;*

(2) Components, the following:

(i) Josephson effect devices;

(ii) Dayem bridges;

(iii) Proximity effect bridges;

(iv) Super-normal-super (SNS) proximity device;

(v) Memory and logic devices; and

(vi) Phase slip devices;

(3) Superconducting electromagnets (including superconducting solenoids) rated for producing peak magnetic inductions of 3 teslas (30 kilogauss) or greater at overall current densities of 10,000 amperes per square centimeter or greater and specialized components therefor, *except:*

(i) *Those which can be fully charged/discharged in 1 minute or more, provided that they are not specially designed for gyrotron applications;*

(ii) *Those which are specially designed to be fully charged/discharged in less than 1 minute and have all of the following characteristics:*

(*a*) *Wound with wire, cable or tape consisting of niobium-titanium superconductive filaments in a copper matrix;*

(*b*) *Inner diameter less than 6 cm;*

(c) *Maximum energy delivered per pulse divided by the duration of that pulse not exceeding 500 kJ per minute; and*

(4) Superconducting electrical equipment (rotating machines and transformers), and specialized components therefor; *except:*

(i) *Superconducting electrical equipment for civil electrical power transmission and distribution;*

(ii) *Direct current hybrid homopolar generators that have a single-pole normal metal armature operating at ambient temperatures and rotating in a magnetic field produced by superconducting windings, provided these windings are the only superconducting component in the generator; and*

(c) Specially designed accessories, sub-assemblies, parts, or components for paragraphs (a) and (b) of this section.

("Overall current density" is defined as the total number of ampere-turns in the coil (that is, the sum of the number of turns multiplied by the maximum current carried by each turn) divided by the total cross section of the coil (comprising the superconductive filaments, the metallic matrix in which the superconductive filament is embedded, the capsulating material, any cooling channels, etc.).)

ADVISORY NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of individual shipments of niobium-titanium wire covered by paragraph (b)(1) of this section having a filament cross-sectional area of 9.5×10^{-5} sq. mm. (or 11 microns diameter) or greater in a copper matrix, in quantities not exceeding 10 kg.

4127B Pipe valves, having all of the characteristics listed in paragraphs (a), (b) and (c) of the list below; and parts, n.e.s.

Controls for ECCN 4127B

Unit: Report pumps, valves, cocks, and regulators in "number"; parts, controls and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Pipe Valves Controlled by ECCN 4127B

Pipe valves having all *of the following characteristics:*

(a) A pipe size connection of 8 inches or more inside diameter;

(b) All flow contact surfaces *made of or lined with* alloys of 10 percent or more nickel and/or chromium;

(c) Rated at 1,500 psi or more; and

(d) Parts, n.e.s.

4128B Pipes, valves, fittings, heat exchangers, or magnetic, electrostatic or other collectors made of graphite or coated in graphite, yttrium or yttrium compounds resistant to the heat and corrosion of uranium vapor.

Controls for ECCN 4128B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

1131A Pumps (except vacuum pumps listed under ECCN 1129A) designed to move molten metals by electromagnetic forces.

Controls for ECCN 1131A

Unit: Report pumps, valves, cocks, and regulators in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

3131A Valves, 0.5 cm or greater in diameter, with bellows seal, wholly made of or lined with aluminum, nickel, or alloy containing 60 percent or more nickel, either manually or automatically operated; and specially designed parts and accessories therefor.

Controls for ECCN 3131A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: National security and nuclear non-proliferation.

Special Licenses Available: None

1145A Containers, jacketed only, specially designed for the storage and/or transportation of liquid fluorine, and specially designed parts and accessories therefor.

Controls for ECCN 1145A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

6199G Other chemical and petroleum equipment n.e.s.; and parts and accessories, n.e.s.

Controls for ECCN 6199G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason For Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

GROUP 2—ELECTRICAL AND POWER-GENERATING EQUIPMENT

NOTE: You need a validated export license to export or reexport technical data related to electrical and power-generating equipment to destinations in Country Groups P, Q, W, Y, or Z. You may use General License GTDR for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided*, That:

(a) The technical data are not listed in paragraph (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, See ECCN 1565A.

1205A Electro-chemical, semiconductor, and radioactive devices for the direct conversion of chemical, solar or nuclear energy to electrical energy.

Controls for ECCN 1205A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation. Nuclear non-proliferation controls apply to exports of power sources not excepted from control by paragraph (c) of this ECCN 1205A to all destinations except countries listed in supplement No. 2 or 3 to part 773 of this subchapter.

Special Licenses Available: Distribution License is available for shipments of commodities defined in ECCN 1205A (a) and (c) to countries listed in Supp. No. 2 or 3 to Part 773. See Part 773 for special licenses that may be available for other commodities covered by ECCN 1205A (including those listed in paragraph (a)(2)(iii)).

List of Electro-chemical, Semiconductor, and Radioactive Devices Controlled by ECCN 1205A

(a) Electro-chemical devices, as follows, and specially designed components therefor:

(1) Fuel cells operating at temperatures of 523 °K (250 °C, 482 °F) or less, including regenerative cells, *i.e.*, cells for generating electric power, to which all the consumable components are supplied from outside the cell;

NOTE: The temperature of 523 °K or less is intended to refer to the fuel cell and not to the fuel conditioning equipment, which may be either an ancillary or an integral part of the fuel cell battery and which may operate at over 523 °K.

(2) Primary cells (non-rechargeable) and batteries having any of the following characteristics:

(i) Reserve (water, electrolyte or thermally activated) batteries possessing a means of activation and having a rated unactivated storage life of three years or more at an ambient temperature of 297k (24 °C, 75 °F);

(ii) Using lithium or calcium (including alloys in which lithium or calcium are constituents) as electrodes and having an energy density at a discharge current equal to C/24 hours (C being the nominal capacity at 297 K (24 °C) in ampere-hours) of more than 300 watt-hours per kg at 297 K (24 °C) and more than 100 watt-hours per kg at 244 K (−29 °C); *or*

NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times the average current in amperes) by the duration of the discharge in hours to 80% of the open-circuit voltage and dividing by the total mass of the cell (or battery) in kg.

(iii) Using an air electrode together with either lithium or aluminum counter-electrodes and having a power output of 5 kW or more or an energy output of 5 kW-hours or more;

(3) Secondary (rechargeable) cells and batteries having either of the following characteristics after 20 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere-hours):

(i) Utilizing nickel and hydrogen as the active constituents and having an energy density of 55 watt-hours per kg (25 watt-hours per lb) or more at 297K (24 °C, 75 °F);

(ii) Utilizing lithium or sodium as electrodes or reactants and having an energy density of 55 watt-hours per kg (25 watt-hours per lb) or more at the rated operating temperature;

NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open-circuit voltage and dividing by the total mass of the cell (or battery) in kg;

(4) Molten salt electrolyte cells and batteries that normally operate at temperatures of 773 °K (500 °C, 932 °F) or below;

(b) Photo-voltaic cells as follows, and specially designed components therefor:

(1) With a power output of 140 W or more per m^2 under 1 kW per m^2 tungsten at 2,800 K (2,527 °C) illumination;

(2) All gallium arsenide photo-voltaic cells excluding those having a power

output of less than 40 W per m^2 measured by the above technique;

(3) With a power output of 4.5 kW or more per m^2 under 100 kW per m^2 silicon carbide at 1,750 K (1,477 °C) illumination; *or*

(4) Electromagnetic (including laser) and ionized particle radiation resistant;

(c) Power sources based on radioactive materials systems other than nuclear reactors, *except:*

(1) Those having an output power of less than 0.5 W and a total weight (force) of more than 90.7 kg (890 N); *or*

(2) Those specially designed and developed for medical use within the human body.

NOTES: 1. See also ECCN 1570A.

2. This ECCN does not control the following cells and power source devices, and specially designed components therefor (nothing in this Note shall be construed as permitting the export of technology for such cells, power source devices or specially designed components):

(a) Fuel cells controlled for export by paragraph (a)(1), provided they are not "space qualified," with a maximum output power of more than 10kW and that use gaseous pure hydrogen and oxygen/air reactants, alkaline electrolyte and a catalyst supported by carbon either pressed on a metal mesh electrode or attached to a conducting porous plastic;

(b) Lithium primary cells (non-rechargeable) or batteries controlled by paragraph (a)(2)(ii) of this ECCN 1205A that:

(1) Are specially designed for consumer applications; *or*

(2) Are specially designed for civil industrial applications and have a nominal capacity equal to or less than 35 ampere-hours and a discharge current of less than C/10 hours (C as defined in paragraph (a)(2)(ii) of this ECCN);

(c) Lithium secondary (rechargeable) cells and batteries controlled by paragraph (a)(3)(ii) of this ECCN that:

(1) Are specially designed for previously determined consumer applications; *or*

(2) Have a nominal capacity less than or equal to 0.5 ampere-hour and an energy density of less than 40 watt-hours per kg (18 watt-hours per lb) at 273K (0°C, 32°F) and a discharge current of less than C/10 hours (C as defined in paragraph (a)(3));

(d) Sodium secondary (rechargeable) cells and batteries controlled for export by subparagraph (a)(3)(ii) that are specially designed for consumer or civil industrial applications and that are not "space qualified";

NOTE: For the purposes of this ECCN 1205A, consumer applications include:

(a) Home electronics, e.g., audio and video equipment, domestic appliances, safety, education, comfort, toys or amusement;

(b) Business or office electronics, e.g., personal computers, calculators, word processors, facsimile equipment or copiers;

(c) Timekeeping applications, e.g., watches or clocks;

(d) Personal or mobile radio communication;

(e) Cameras;

(f) Medical electronic equipment, e.g., cardiac pacemakers, hearing aids.

3261A Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction; and specially designed parts therefor.

Controls for ECCN 3261A

Unit: Report systems and tubes in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: National security, nuclear non-proliferation.

Special Licenses Available: None.

ADVISORY NOTE: 1. (GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of neutron generator systems, including tubes, as defined in ECCN 3261A.

2. (GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of tubes and systems whose technical specifications are essentially the same as those for previously approved exports, provided that they are for civil uses.

4261B Particle accelerators having all of the specifications described in the List below.

Controls for ECCN 4261B

Unit: Report in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: None.

List of Specifications for Particle Accelerators Controlled by ECCN 4261B

(a) Peak boom power exceeding 500 MW;

(b) Output energy exceeding 500 kV; and

(c) An output beam intensity exceeding 2,000 amperes with a pulse width of 0.2 microseconds or less; and

(d) Specially designed parts and accessories therefor.

6294F Portable electric generators and specially designed parts.

Controls for ECCN 6294F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: $0.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled or used by or for these entities. See § 785.4(a).

6299G Other electrical and power generating equipment, n.e.s.; and parts and accessories, n.e.s.

Controls for ECCN 6299G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

GROUP 3—GENERAL INDUSTRIAL EQUIPMENT

NOTE: You need a validated export license to export or reexport technical data related to general industrial equipment to destinations in Country Groups Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided*, That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the Regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

For Mechanical Measuring Instruments, See ECCN No. 1532.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

4302B Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa.

NOTE: For control s of related technical data, see § 779.4(f)(1)(i)(*b*).

Controls for ECCN 4302B

Unit: Report nozzles in "number".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the

People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for GCT: Entire entry.

Processing Code: TE.

Reason for Control: Foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

1310A Systems and components therefor specially designed for producing metal alloys, metal alloy powder or alloyed materials controlled by ECCN 1610A.

Controls for ECCN 1310A

Unit: Report in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Commodities Controlled by ECCN 1310A

Systems and components therefor specially designed for producing metal alloys, metal alloy powder or alloyed materials controlled by ECCN 1610A.

1312A "Isostatic presses" and specially designed dies, molds, components, accessories and controls and "specially designed software" therefor.

Controls for ECCN 1312A

Unit: Report machines in "number", parts and accessories in "$ value"

Validated License Required: Country Groups QSTVWYZ

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None available.

List of Equipment Controlled by ECCN 1312A

"Isostatic presses", having both of the following characteristics, and specially designed dies, molds, components, accessories and controls and "specially designed software" therefor:

(a) Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 127 mm or more; *and*

(b) Having any of the following characteristics:

(1) Maximum working pressure exceeding 207 MPa;

(2) Chamber cavity with an inside diameter (i.e., the maximum inside diameter of the working chamber) exceeding 406 mm, when the controlled thermal environment that can be achieved and maintained exceeds 1,773 K (1,500° C); *or*

(3) Having a facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

NOTE: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

TECHNICAL NOTE: "Isostatic presses" are equipment capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal pressure in all directions within the cavity upon a workpiece or material.

(ADVISORY) NOTE FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of presses having no controlled thermal environment within the closed cavity and that are used for the manufacture of industrial refractory and ceramic products.

5312F Isostatic presses, specially designed dyes and molds, components, accessories, and controls not controlled by ECCN 1312A.

Controls for ECCN 5312F

Unit: Report machines in "number", parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to part 778.

GLV $ Value Limit: $5,000 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to Part 778; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

List of Equipment Controlled by ECCN 5312F

"Isostatic presses", as follows:

(a) Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 127 millimeters (5 inches) or more; or

(b) Capable of achieving a maximum working pressure of 69 megapascals (10,000 psi) or greater and possessing a chamber cavity with an inside diameter in excess of 254 millimeters (10 inches).

2317A Miscellaneous equipment and materials.

Controls for ECCN 2317A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; paragraphs (d) and (e) of the Illustrative List are also controlled for foreign policy reasons.

Special South Africa Controls: Commodities defined in paragraph (d) of ECCN 2317A, and specially designed parts and accessories, are subject to the Republic of South Africa embargo policy, and no technical data relating to those commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Licenses Available: See Part 773.

Illustrative List of Miscellaneous Equipment and Materials Controlled by ECCN No. 2317A

(a) Closed and semi-closed circuit (rebreathing) apparatus for diving and underwater swimming;

(b) Specially designed components for use in the conversion of open-circuit apparatus to military use;

(c) Power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units;

(d) Construction equipment built to military specifications, specially designed for airborne transport; and

(e) Specially designed parts and accessories therefor.

2319A Environmental chambers capable of pressures below 10^{-4} Torr, and specially designed components therefor.

Controls for ECCN 2319A

Unit: Report by "$ value."

Validated License Required: Country groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

3336A Plants specially designed for the production of uranium hexafluoride (UF_6) and specially designed or prepared equipment (including UF_6 purification equipment), and specially designed parts and accessories therefor.

Controls for ECCN 3336A

Unit: Report by "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security and nuclear non-proliferation.

Special Licenses Available: None.

Technical Data: No technical data (including operating and maintenance instructional material) related to the commodities defined in ECCN 3336A may be exported under General License *GTDR;* a validated license is required for all destinations, *including Canada.*

4337B Compressors and blowers especially designed or prepared to be corrosion resistant to hydrogen sulfide, and having all of the characteristics as described in this entry.

Controls for ECCN 4337B

Unit: Report by "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special License Available: None.

Definitive List of Characteristics Describing Compressors and Blowers Controlled by Entry No. 4337B

(a) Capable of sustaining a pressure in hydrogen sulfide in excess of 15 atmospheres;

(b) Having an intake-to-discharge pressure ratio between 0.3 and 3.0; and

(c) Having a capacity equal to or equivalent to or requiring at least 500 hp.

1352A Nozzles, dies and extruder barrels specially designed for the processing of the fluorocarbon materials covered by ECCN 1754A (a)(2).

Controls for ECCN 1352A

Unit: Report by "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

1353A Manufacturing and testing equipment for optical fiber, optical cable and other cables, and specially designed components therefor.

NOTE: For "specially designed software", see Supp. No. 3 to Part 779.

Controls for ECCN 1353A

Unit: Report by "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1353A

(a) Equipment specially designed to manufacture cable controlled by ECCN 1526A (a) or (d);

(b) Equipment specially designed to manufacture optical fiber controlled by ECCN 1526A;

(c) Equipment specially designed to manufacture "optical fiber preforms" controlled by ECCN 1767A;

(d) Optical fiber and "optical fiber preform" characterization equipment using semiconductor "lasers" for the testing of optical fibers or "optical fibers preforms" at operating wavelengths exceeding 1,000 nm;

NOTE: The status of optical fiber and "optical fiber preform" characterization equipment that contains "lasers" is defined in this ECCN 1353A.

(ADVISORY) NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y and the People's Republic of China of the following:

(a) Optical fiber or "optical fiber preform" characterization equipment using semiconductor "lasers" with a wavelength of 1,370 nm or less;

(b) Equipment specially designed for the manufacture of silica-based "optical fiber preforms", optical fibers or cables.

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

Controls for ECCN 1355A

Unit: Report photographic plates in "sq. ft." when applicable; machinery and equipment in "number."

Validated License Required: Country Groups QSTVWYZ, except as provided for magnetically enhanced sputtering equipment below.

Magnetically enhanced sputtering equipment. A validated license is required to Country Groups QSTVWYZ for single "wafer" in-line magnetically enhanced sputtering equipment and multiple wafer magnetically enhanced sputtering equipment that uses vacuum load locks to isolate the main chamber from the loading chamber. A validated license is required only to Country Groups QSWYZ, the People's Republic of China, and Afghanistan for other magnetically enhanced sputtering equipment controlled by paragraph (b)(1)(vi).

TECHNICAL NOTE: A "wafer" is a thin disk-like section of material (e.g., silicon, gallium arsenide, or aluminum oxide—crystalline or noncrystalline) that is the underlying support, base, or structure upon which materials are subsequently deposited and processed in the production of semiconductor devices.

GLV $ Value Limit: $100 for commodities defined in paragraphs (b)(2)(i) and (ii) of the List below to Country Groups T & V, except $0 for the People's Republic of China and Afghanistan; $500 for other commodities to Country Groups T & V, except $0 for the People's Republic of China and Afghanistan; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Metal-organic chemical vapor deposition reactors; molecular beam epitaxial growth equipment; electron beam systems capable of mask-making or semiconductor device processing; electron beam, ion beam, or X-ray equipment for projection image transfer; and photo-optical or non photo-optical step and repeat or partial field equipment controlled by paragraphs (b)(1)(iv)(e), (b)(1)(v), (b)(1)(x), (b)(2)(vii), and (b)(2)(viii).

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1355A

(a) Equipment specially designed for the manufacture or testing of electron tubes, optical elements and specially designed components therefor controlled by ECCNs 1555A, 1556A, or 1558A;

(b) Equipment specially designed for the manufacture or testing of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

NOTE: Paragraph (b) of this ECCN 1355A also controls such equipment used or modified for use in the manufacture or testing of other devices, such as imaging devices, electro-optical devices, and acoustic-wave devices.

(1) Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of paragraph (b) of this ECCN, as follows:

NOTE: This ECCN 1355A does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by paragraph (b)(1) of this ECCN.

(i) Equipment for producing polycrystalline silicon controlled by ECCN 1757A(f);

(ii) Equipment specially designed for purifying or processing III-V and II-VI semiconductor materials controlled by ECCN 1757A, except crystal pullers, for which see paragraph (b)(1)(iii) of this ECCN;

(iii) Crystal pullers and furnaces, as follows:

NOTE: This paragraph (b)(1)(iii) does not control diffusion and oxidation furnaces.

(A) Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

(B) "Stored program controlled" crystal pullers having any of the following characteristics:

(*1*) Rechargeable without replacing the crucible container;

(*2*) Capable of operation at pressures above 2.5×10^5 Pa; *or*

(*3*) Capable of pulling crystals of a diameter greater than 100 mm;

(iv) "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

(A) Capable of producing a layer thickness uniformity across the wafer of better than, or equal to, ±3.5%;

(B) Rotation of individual wafers during processing; *or*

(C) Metallo-organic "chemical vapor deposition" (MOCVD) reactors;

(v) Molecular beam epitaxial growth equipment;

(vi) "Magnetically enhanced" sputtering equipment with specially designed integral load-locks capable of transferring wafers in an isolated vacuum environment;

(vii) Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

(A) Patterning capability;

(B) Accelerating voltage for more than 200 keV; *or*

(C) Capable of high energy oxygen implant into a heated "substrate";

(viii) "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

(A) Batch types having either of the following:

(*1*) End-point detection other than optical emission spectroscopy types; *or*

(*2*) Reactor operational (etching) pressure of 26.66 Pa or less;

(B) Single wafer types with any of the following:

(*1*) End-point detection other than optical emission spectroscopy types;

(*2*) Reactor operational (etching) pressure of 26.66 Pa or less; *or*

(*3*) Cassette-to-cassette and load locks wafer handling;

NOTES: 1. "Batch types" refers to machines that are not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines that are specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers, but where the etching parameters, e.g., RF power or end point, can be indpendently determined for each individual wafer.

(ix) Chemical vapor deposition (CVD) equipment, (e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD) for semi-conductor device manufacturing, with any of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon;

(A) Chemical vapor deposition equipment that operates below 10^5 Pa; *or*

(B) PECVD equipment that either operates below 60 Pa (450 militorr) or has automatic cassette-to-cassette and load-lock wafer handling;

NOTE: This paragraph (b)(1)(ix) does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

(x) Electron beam systems specially designed or modified for mask making or semiconductor device processing and having any of the following characteristics:

(A) Electrostatic beam deflection;

(B) Shaped, non-Gaussian beam profile;

(C) Digital-to-analog conversion rate exceeding 3 MHz;

(D) Digital-to-analog conversion accuracy exceeding 12 bit; *or*

(E) Target-to-beam position feedback control precision of 1 micrometer or finer;

NOTE: This paragraph (b)(1)(x) does not control either electron beam deposition systems or general purpose scanning electron microscopes.

(xi) Surface finishing equipment for the processing of semiconductor wafers as follows:

(A) Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

(B) Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

NOTE: This paragraph (b)(1)(xi) does not control single-side lapping and polishing equipment for wafer-surface finishing.

(xii) Interconnection equipment that includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by this ECCN 1355A into a complete system;

(xiii) "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

(A) Positioning accuracy less than ±1 micrometer; *or*

(B) Spot size (kerf width) less than 3 micrometer;

(2) Masks, mask substrates, mask-making equipment and image-transfer equipment for the manufacture of devices and components as specified in the heading of paragraph (b) of this ECCN 1355A, as follows:

NOTE: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

(i) Finished masks, reticles and designs therefor, *except*:

(A) Finished masks or reticles for the production of integrated circuits that are not controlled under an "A"-level entry in the CCL; *or*

(B) Masks or reticles, having both of the following characteristics:

(*1*) Their design is based on geometries of 2.5 micrometers or more; *and*

(*2*) The design does not include special features to alter the intended use by any means of production equipment or "software";

(ii) Mask "substrates" as follows:

(A) Hard surface (e.g., chromium, silicon, molybdenum) coated "substrates" (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; *or*

(B) "Substrates" specially designed for X-ray masks;

(iii) Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semicondutor devices or integrated circuits;

(iv) Equipment or machines, as follows, for mask or reticle fabrication:

(A) Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometers in the photoresist on the "substrate";

(B) Mask or reticle fabrication equipment using ion or laser beam lithography capable of producing line widths of less than 2.5 mircrometers; *or*

(C) Equipment or holders for altering masks or reticles or adding pellicles to remove defects.

NOTE: This paragraph (b)(2)(iv) does not control mask fabrication equipment using photo-optical methods that were either commercially available before January 1, 1980, or that have a performance no better than such equipment.

(v) "Stored program controlled" equipment for the inspection of masks, reticles or pellicules with:

(A) A resolution of 0.25 micrometer or finer; *and*

(B) A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

NOTE: This paragraph (b)(2)(v) does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

(vi) Align and expose equipment for wafer production using photo-optical methods, including both projection image transfer equipment and step and repeat equipment, capable of performing any of the following functions:

(A) Production of a pattern size of less than 2.5 micrometers;

(B) Alignment with a precision finer than ±10.25 micrometer (3 sigma); or

(C) Machine-to-machine overlay no better than ±0.3 micrometers;

NOTE: This paragrapn (b)(2)(vi) does not control photo-optical contact and proximity mask align and expose equipment and contact image transfer equipment.

(vii) Electron beam, ion beam, or x-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometers;

NOTE: For focused, deflected beam systems (direct write systems), see paragraph (b)(1)(x) or paragraph (b)(10) of this ECCN 1355A.

(viii) Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometers;

(3) "Stored program controlled" inspection equipment for the automatic detection of defects, errors or contami-

nants of 0.6 micrometers or less in or on processed wafers, "substrates", other than printed circuit boards or chips, using optical image acquisition for pattern comparison;

NOTE: This paragraph (b)(3) does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

(4) Specially designed "stored program controlled" measuring and analysis equipment, as follows:

(i) Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

(ii) Equipment for line width measurement with a resolution of 1 micrometer or finer;

(iii) Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometers or less with a resolution of 1 micrometer or finer;

(5) Equipment for the assembly of integrated circuits, as follows:

(i) "Stored program controlled" die bonders having all of the following characteristics:

(A) Specially designed for hybrid integrated circuits;

(B) X-Y stage positioning travel exceeding 37.5 × 37.5 millimeters; *and*

(C) Placement accuracy in the X-Y plane of finer than ±10 micrometers;

(ii) "Stored program controlled" equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

(iii) Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by ECCN 1564A(b) and that have a throughput equal to or more than one package per minute:

NOTE: Paragraph (b)(5) does not control general purpose resistance type spot welders.

(6) "Stored program controlled" wafer probing equipment having any of the following characteristics:

(i) Positioning accuracy finer than 3.5 micrometers;

(ii) Capable of testing devices having more than 68 terminals; *or*

(iii) Capable of testing at a frequency exceeding 1 GHz;

(7) Test equipment as follows (for standard test instruments, see ECCN 1529A):

(i) "Stored program controlled" equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at greater frequencies than 18 GHz;

TECHNICAL NOTE: Discrete semiconductor devices include photocells and solar cells.

(ii) "Stored program controlled" equipment specially designed for testing integrated circuits and "assemblies" thereof, capable of functional testing:

(A) At a pattern rate exceeding 20 MHz; *or*

(B) At a pattern rate exceeding 10 MHz; but not exceeding 20 MHz, and capable of testing packages of more than 68 terminals;

NOTE: Paragraph (b)(7)(ii)(B) does not control equipment specially designed for testing integrated circuits not controlled by ECCN 1564A.

NOTES: 1. Paragraph (b)(7)(ii) of this ECCN does not control test equipment specially designed for testing "assemblies" or a class of "assemblies" for home and entertainment applications.

2. Paragraph (b)(7)(ii) of this ECCN does not control test equipment specially designed for testing electronic components, "assemblies" and integrated circuits not controlled by ECCN 1564A, provided that such test equipment does not incorporate computing facilities with "user accessible programmability".

(iii) Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using "stored program controlled" measurements or computer aided evaluation and having any of the following characteristics:

(A) Using scanning light spot diameters of less than 0.12 mm;

(B) Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; *or*

(C) Designed for evaluating arrays capable of creating images with more than 32 × 32 line elements;

(8) Filters, for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometers or smaller per 0.02832 m^3 and filter materials therefore;

(9) Electron beam test systems, capable of operating at or below 3,000 eV, for non-contactive probing of powered-up semiconductor devices having any of the following:

(i) Stroboscopic capability with either beam blanking or detector strobing;

(ii) An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; *or*

(iii) Electrical test fixtures for performance analysis of integrated circuits;

NOTE: This paragraph (b)(9) does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

(10) "Stored program controlled" multifunctional focused ion beam systems, specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having any of the following characteristics:

(i) Target-to-beam position feedback control precision of 1 micrometer or finer; *or*

(ii) Digital-to-analog conversion accuracy exceeding 12 bit;

(11) Particle measuring systems employing "lasers", designed for measuring particle size and concentration in air, that have both of the following characteristics:

(i) Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m^3 per minute or more; *and*

(ii) Capable of characterizing Class 10 clean air or better.

(ADVISORY) NOTE 1 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment, as follows, for use in silicon semiconductor manufacturing:

(a) Equipment for the production of polycrystalline silicon;

(b) Epitaxial reactors, *except* those that are:

(1) For molecular beam epitaxy; *or*

(2) Specially designed for metallo-organic deposition or liquid-phase epitaxy;

(c) "Magnetically enhanced" multiple wafer "sputtering" equipment;

(d) "Stored program controlled" die bonders;

(e) "Stored program controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those not controlled by paragraph (b)(7) of this ECCN 1355A.

(ADVISORY) NOTE 2 for the People's Republic of China: Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of equipment controlled by paragraph (b)(7) that can produce patterns finer than 2.5 micrometers, but not finer than 2 micrometers.

1357A Equipment for the production of fibers controlled for export by ECCN 1763A or their composites, and specially designed components and accessories and "specially designed software" therefor

NOTES: 1. For technical data and procedures, see § 779.4(d)(11).

2. For "specially designed software", see Supp. No. 3 to Part 779.

Controls for ECCN 1357A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE

Reason for Control: National security, foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1357A

(a) Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed to fabrisite composite structures or laminates from fibrous and filamentary materials; coordinating and programming controls therefor;

(b) Tape-laying machines of which the motions for positioning and laying tape and sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of composite airframes and missile structures;

(c) Multidirectional, multidimensional weaving machines and interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture composite structures, *except* textile machinery that has not been modified for the above end-use;

(d) Specially designed or adapted equipment for the production of fibrous and filamentary materials covered by sub-paragraphs (a) and (b) of ECCN 1763A as follows:

(1) Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special provision to strain the fiber during heating;

(2) Equipment for the vapor deposition of elements or compounds on heated filamentary substrates; and

(3) Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

(e) Specially designed or adapted equipment for special fiber surface treatment or for producing prepregs and preforms covered by ECCN 1763A(c);

NOTES: 1. Equipment covered by paragraph (e) above includes, but is not limited to, rollers, tension stretchers, coating equipment, cutting equipment and clicker dies.

2. Specially designed or adapted components and accessories for the machines covered by this ECCN 1357A include, but are not limited to, moulds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures or laminates covered by paragraph (d) of the "LIST" in ECCN 1763A.

3. See § 779.4(d) for technical data requiring a validated license for export to all destinations except Canada.

1358A Equipment specially designed for the manufacture or testing of devices and assemblies thereof controlled by ECCN 1588A or magnetic recording media described in ECCN 1572A and specially designed components therefor.

NOTE: For "software", see Supp. No. 3 to Part 779.

Controls for ECCN 1358A

Unit: Report in "$ value."

Validated License Required: Country Group QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

Definitive List of Machinery and Equipment Controlled by ECCN 1358A

TECHNICAL NOTE: For this ECCN 1358A, single aperture forms described in paragraph (b) of ECCN 1588A with a maximum dimension less than 0.76 mm (30 mils) are considered controlled types.

(a) Equipment for the manufacture of single and multi-aperture forms controlled by paragraphs (b), (c) or (d) of ECCN 1588A, as follows:

(1) "Automatic" presses to produce controlled types;

(2) Press dies to produce controlled types;

(3) "Automatic" equipment for monitoring, grading, sorting, exercising or testing of controlled types;

(b) Equipment for the manufacture of thin film storage or switching devices having square hysteresis loops and "automatic" equipment for monitoring, grading, sorting, exercising or testing devices controlled by paragraph (e) of ECCN 1588A;

(c) "Automatic" equipment for monitoring, exercising or testing assemblies of devices controlled by paragraph (b), (c), (d) or (e) of ECCN 1588A;

(d) Equipment that incorporates specially designed modifications for the application of magnetic coating to flexible disk recording media with a "packing density" exceeding 2,460 bits per cm (6,250 bits per inch);

NOTE: This ECCN 1358A does not control general purpose coating equipment.

(e) Equipment specially designed for the application of magnetic coating to non-flexible (rigid) disk type recording media as described in paragraph (d) of ECCN 1572A;

(f) Stored program controlled equipment for monitoring, grading, exercising or testing recording media, other than tape, controlled by paragraph (d) of ECCN 1572A.

Note 1: The term "automatic" refers to machinery not requiring the assistance of a human operator to complete its "function(s)" during each complete cycle of operations.

Note: The term "function(s)" does not include the initial loading or final unloading of material from the machine.

(Advisory) Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by paragraph (d) above, provided that:

(a) The equipment is used for a legitimate civil end-use and is reasonable for that use;

(b) Reserved; *and*

(c) The equipment cannot produce recording media for computer flexible disk cartridges exceeding a "gross capacity" of 17 million bits.

Note 3: This ECCN 1358A does not control:

(a) "Automatic" equipment for monitoring, grading, exercising or testing recording media controlled by paragraph (d) of ECCN 1572A having the following characteristics:

(1) For digital recording tape, a maximum recording density of less than 3,937 bits per cm; *or*

(2) For analog recording tape, a coating thickness greater than 2.54 micrometers;

(b) Diskette unit test equipment.

4360B Centrifugal balancing machines, fixed or portable, horizontal or vertical having all of the characteristics described in this entry.

Controls for ECCN 4360B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

Definitive List of Centrifugal Balancing Machine Characteristics Controlled by ECCN 4360A

(a) Suitable for balancing flexible rotors having a diameter of from 3 inches to 16 inches, and a length of 24 inches or more; and

(b) Mass capability of from 2 to 50 lbs.; and

(c) Capable of balancing to a residual imbalance of 09.001 in.-lb./lb. per plane or greater; and

(d) Capable of balancing in three or more planes.

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines; and specially designed components, and accessories therefor.

Note: For "software", see Supp. No. 3 to Part 779.

Controls for ECCN 1361A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Equipment controlled by paragraph (a), (b), (c), (d), (f), or (g).

Processing Code: TE.

Reason for Control: National security; foreign policy. Foreign policy controls apply to this entry, except for paragraph (e) of the List below, for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1131A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Wind Tunnels Controlled by ECCN 1361A

(a) Supersonic (Mach 1.4 to Mach 5), hypersonic (Mach 5 to Mach 15) and hypervelocity (above Mach 15) wind tunnels, *except:*

(i) Supersonic (Mach 1.4 to Mach 5) wind tunnels not specially designed for, or fitted with means of, preheating the air; *or*

(ii) Wind tunnels specially designed for educational purposes and having a "test section size" (measured internally) of less than 25 cm (10 inches);

TECHNICAL NOTE: "Test section size" is understood to be the diameter of the circle, or the side of the square, or the longest side of the rectangle constituting possible shapes of the test section.

(b) Devices for simulating flow-environments at Mach 5 and above, regardless of the actual Mach number at which the devices operate, including hot shot tunnels, plasma arc tunnels, shock tubes, shock tunnels, gas tunnels and light gas guns;

(c) Wind tunnels and devices, other than two dimensional (2-D) sections, that have unique capabilities for simulating Reynolds number flow in excess of 25×10^6, at transonic velocities; and

(d) Automated control systems, instrumentation (including sensors) and automated data-acquisition equipment, specially designed for use with wind tunnels and devices controlled by sub-paragraphs (a), (b) or (c) above;

(e) Models, specially designed for use with wind tunnels or with the devices covered by sub-paragraphs (a) (b) or (c) above, of controlled aircraft, helicopters, air-foils, or surface-effect vehicles;

NOTE: Specially designed models are those equipped with sensors and a means of transmitting data from the sensors to the data-acquisition system, or equipped with features for using non-intrusive sensors (*i.e.*, not directly connected to the model or not located in the flow adjacent to the model). Other models are controlled by ECCN 9993M.

(f) Specially designed electromagnetic interference and electromagnetic pulse (EMI/EMP) simulators;

(g) Specially designed test facilities and equipment for the development of gas turbine aero-engines and components, as follows:

(1) Special test facilities capable of applying dynamic flight loads, measuring performance or simulating the design operating environments for rotating assemblies or aero-engines;

(2) Test facilities, test rigs and simulators for measuring combustion system and hot gas flow path performance, heat transfer and durability for static assemblies and aero-engine components;

(3) Specially designed test rigs, equipment of modified gas turbine engines utilized for development of gas turbine aero-engine internal flow systems (gas path seals, air-oil seals and disc cavity flow fields).

(ADVISORY) NOTE: (Not Eligible for General Licenses GFW and G-COM) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of specially designed components controlled by this ECCN 1361A, for wind tunnels and for facilities and equipment covered by subparagraph (g) previously exported, provided that such components will not upgrade the performance of the wind tunnel, facilities or equipment and, for normally-consumable replacement components, the quantity will not exceed a 6-month supply.

1362A Vibration test equipment.

Controls for ECCN 1362A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to vibration test equipment for nuclear weapons delivery purposes.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

Definitive List of Vibration Test Equipment as Controlled by ECCN 1362A

(a) Vibration test equipment using digital control techniques and specially designed ancillary equipment and software therefor, *except*:

(1) *Individual exciters (thrusters) with a maximum thrust of less than 100kN (22,500 lb.);*

(2) *Analog equipment;*

(3) *Mechanical and pneumatic exciters (thrusters);*

(4) *Vibrometers;*

(5) *Digital ancillary equipment not covered by ECCN Nos. 1529A, 1531A, 1565A or 1568A;*

(b) High intensity acoustic test equipment capable of producing an overall sound pressure level of 140 dB

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or greater referenced to 2×10^{-5} N/m^{2}) or with a rated output of 4kW or greater and specially designed ancillary equipment and software therefor, except:

(1) Analog equipment;

(2) *Digital ancillary equipment not covered by ECCN Nos. 1529A, 1531A, 1565A or 1568A*

(c) Ground vibration (including modal survey) test equipment that uses digital control techniques and specially designed ancillary equipment and software therefor, except:

(1) *Analog equipment.*

(2) *Digital ancillary equipment not covered by ECCN Nos. 1529A, 1531A, 1565A or 1568A;*

3362A Power generating and/or propulsion equipment specially designed for use with military nuclear reactors. (This ECCN does not modify Office of Munitions Control coverage, as indicated in Category VI, Part e, of the U.S. Munitions List. See Supp. No. 2 to Part 770.)

Controls for ECCN 3362A

Unit: Report generators and sets, turbines, exchangers, and exchange type condensers in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security and nuclear non-proliferation.

Special Licenses Available: A Distribution License is available for shipment of commodities defined by ECCN 3362A to countries listed in Supp. Nos. 2 and 3 to Part 773.

1363A Specially designed water tunnel equipment, components and accessories for the design and development of vessels.

NOTE: For "specially designed software" and/or databases in software form, see Supp. No. 3 to Part 779.

Controls for ECCN 1363A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason or Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1363A

(a) Automated control systems, instrumentation (including sensors) and data acquisition equipment specially designed for water tunnels;

(b) Automated equipment to control air pressure acting on the surface of the water in the test section during the operation of the water tunnel;

(c) Components and accessories for water tunnels, as follows:

(1) Balance and support systems;

(2) Automated flow or noise measuring devices; *and*

(3) Models of hydrofoil vessels, surface-effect vehicles, SWATH vessels and specially designed equipment and components controlled by ECCN 1416A (a), (b), (c), (e), (f), (g) and (h) for use in water tunnels.

NOTE: The water tunnels referred to in this ECCN are used for the hydrodynamic testing of a fixed model, using a moving fluid.

3363A Electrolytic cells for the production of flourine with a production capacity greater than 250 grams of flourine per hour; and specially designed parts and accessories thereof.

Controls for ECCN 3363A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security, nuclear non-proliferation. Nuclear controls do not apply to countries listed in Supp. Nos. 2 and 3 to Part 773.

Special Licenses Available: None.

4363B Nuclear reactor and nuclear power plant related equipment.

Controls for ECCN 4363B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ; exports to countries listed in Supp. Nos. 2 and 3 to Part 773 are exempt from validated license requirements.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Commodities Controlled by ECCN 4363B

(a) Reactor and power plant simulators, models or mock-ups;

(b) Process control systems intended for use with nuclear reactors;

(c) Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor; and

(d) Commodities, parts and accessories specially designed or prepared for use with nuclear plants (*e.g.*, snubbers, airlocks, reactor inspection equipment) *except* items licensed by the NRC pursuant to 10 CFR Part 110.

1370A Machine tools for generating optical quality surfaces, specially designed components and accessories therefor.

NOTE: For "numerically controlled" machine tools capable of generating optical quality surfaces, see ECCN 1091A.

Controls for ECCN 1370A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security and nuclear non-proliferation.

Special Licenses Available: See Part 773.

Definitive List of Commodities Controlled by ECCN 1370A

(a) Turning machines using a single point cutting tool and having all of the following characteristics:

(1) Slide positioning accuracy less (finer) than 0.0005 mm per 300 mm of travel, TIR (peak-to-peak);

(2) Slide positioning repeatability less (finer) than 0.00025 mm per 300 mm of travel, TIR (peak-to-peak);

(3) Spindle runout (radial and axial) less than 0.0004 mm TIR (peak-to-peak);

(4) Angular deviation of the slide movement (yaw, pitch and roll) less (finer) than 2 seconds of are (peak-to-peak) over full travel;

(5) Slide perpendicularity less than 0.001 mm per 300 mm of travel, TIR (peak-to-peak);

(b) Fly cutting machines having both of the following characteristics:

(1) Spindle run-out (radial and axial) less than 0.0004 mm TIR (peak-to-peak);

(2) Angular deviation of slide movement (yaw, pitch and roll) less (finer) than 2 seconds of arc (peak-to-peak) over full travel;

(c) Specially designed components, as follows:

(1) Spindle assemblies consisting of spindles and bearings as a minimal assembly, except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than 0.0008 mm TIR (peak-to-peak);

(2) Linear induction motors used as drives for slides, having all of the following characteristics:

(i) Stroke greater than 200 mm;

(ii) Nominal force rating greater than 45 N; and

(iii) Minimum controlled incremental movement less than 0.001 mm; or

(d) Specially designed accessories, *i.e.*, single point diamond cutting tool inserts having all of the following characteristics:

(1) Flawless and chipfree cutting edge when magnified 400 times in any direction;

(2) Cutting radius between 0.1 and 5 mm; and

(3) Cutting radius out-of-roundness less than 0.002 mm TIR (peak-to-peak).

Technical Note: Machines will be evaluated under the conditions yielding the most accurate values, including but not limited to, the incorporation of control systems that permit mechanical, electronic and software compensation.

1371A Anti-friction bearings.

Controls for ECCN 1371A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

Definitive List of Commodities Controlled by ECCN 1371A

(a) Ball and roller bearings having an inner bore diameter of 10 mm or less and tolerances of ABEC 5, RBEC 5 (or national equivalents) or better and either of the following characteristics:

(1) Made of special materials, i.e., with rings, balls or rollers made from any steel alloy or other material including, but not limited to high-speed tool steels, Monel metal, beryllium, metaloids, ceramic, and sintered metal composites *except the following: low-carbon steel; SAE-52100 high-carbon chromium steel; SAE-4615 nickel molybdenum steel; AISI-440C (SAE-5144OC) stainless steel; or national equivalents;* and/or

(2) Manufactured for use at normal operating temperatures over 302° F (150° C) either by use of special materials or by special heat treatment;

(b) Ball and roller bearings *except separable ball bearings and thrust ball bearings,* having an inner bore diameter exceeding 10 mm and having tolerances of ABEC 7, RBEC 7 (or national equivalents) or better and either of the following characteristics:

(1) Made of special materials, *i.e.,* with rings, balls, or rollers made from any steel alloy or other material including, but not limited to, high-speed tool steels, Monel metal, beryllium, metaloids, ceramics, and sintered metal composites *except the following: low-carbon steel; SAE-52100 high-carbon chromium steel; SAE-4615 nickel molybdenum steel; AISI-440C (SAE-5144C) stainless steel; or national equivalents;* and/or

(2) Manufactured for use in normal operating temperatures over 302° F (150° C) either by use of special materials or by special heat treatment;

(c) Ball and roller bearings having tolerances better than ABEC 7 (or national equivalents); and

(d) Gas-lubricated foil bearings;

(e) Bearing parts usable only for bearings controlled by this ECCN 1371A, as follows: Outer rings, inner rings, retainers, balls, rollers, and subassemblies.

Commodity Interpretation: Ball and roller bearings and specially designed parts.

(a) A ball or roller bearing physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identity as a bearing and the machine or segment of machinery *containing the bearing* is the item subject to export license requirements.

(b) A ball or roller bearing not incorporated in a segment of a machine prior to shipment but shipped as a component of a complete unassembled (knocked-down) machine is considered a component of the machine, and the *complete machine* is the item subject to export license requirements.

(c) Ball or roller bearings shipped as spares or replacements are classified under this ECCN 1371 and under ECCN 6699 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of ball or roller bearings and ball or roller bearings shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

Advisory Note: Licenses are likely to be approved for export to Country Groups QWY of reasonable quantities of bearings as defined in ECCN 1371A to satisfactory civil end-users that have furnished assurances that the bearings will be incorporated in equipment previously imported from the

U.S., Canada or countries in Country Groups T or V.

(d) Ceramic bearings controlled by ECCN 1371A consist of bearing elements (*e.g.*, balls, rollers and/or races) made from ceramic or hybrid (ceramic plus metal) materials and designed to operate at temperatures over 150°C and at DN values equal to or greater than 1.5×10^6.

NOTE: DN is defined as the product of the bearing bore diameter in millimeters (mm) and the bearing rotational velocity in revolutions per minute (r.p.m.).

NOTE: Hollow bearings are *not* controlled by this ECCN 1371A.

1385A Specially designed production equipment for compasses, gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A.

Controls for ECCN 1385A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A (commodities described in this entire entry).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1385A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1385A

TECHNICAL NOTE: Reserved.

(a) For ring laser gyro equipment, the following equipment used to characterize mirrors, having the threshold accuracy shown or better:

(1) Rectilinear scatterometer (10 ppm);

(2) Polar scatterometer (10 ppm);

(3) Reflectometer (50 ppm);

(4) Profilometer (5 angstroms).

(b) For other inertial equipment:

(1) Inertial Measurement Unit (IMU) module tester;

(2) IMU platform tester;

(3) IMU stable element handling fixture;

(4) IMU platform balance fixture;

(5) Gyro tuning test station;

(6) Gyro dynamic balance station;

(7) Gyro run-in/motor test station;

(8) Gyro evacuation and fill station;

(9) Centrifuge fixture for gyro bearings;

(10) Accelerometer axis align station;

(11) Accelerometer test station.

1388A Specially designed equipment for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, for non-electronic substrates by processes defined in the Table in Supplement No. 4 to Part 779 and specially designed automated handling, positioning, manipulation and control components, and "specially designed software" therefor

Controls for ECCN 1388A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1388A

(a) "Stored program controlled" "chemical vapor deposition" (CVD) production equipment with both of the following:

(1) Process modified for one of the following:

(i) Pulsating CVD;

(ii) Controlled nucleation thermal decomposition (CNTD); *or*

(iii) Plasma enhanced or plasma assisted CVD; *and*

(2) Any of the following:

(i) Incorporating high vacuum (less than or equal to 10^{-7} atm) rotating seals;

(ii) Operating at reduced pressure (less than 1 atm); *or*

(iii) Incorporating in situ coating thickness control;

(b) "Stored program controlled" "ion implantation" production equipment having beam currents of 5 mA or higher;

(c) "Stored program controlled" "electron beam physical vapor deposition" (EB-PVD) production equipment with either of the following characteristics:

(1) Incorporating power systems greater than 80 kW; or

(2) (i) Having power systems greater than 50 kW; *and*

(ii) Having both of the following characteristics:

(A) Incorporating a liquid pool level laser control system that regulates precisely the ingots feed rate; *and*

(B) Incorporating a computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

(d) "Stored program controlled" "plasma spraying" production equipment having any of the following characteristics:

(1) Operating at atmospheric pressure discharging molten or partially molten material particles into air or inert gas (shrouded torch) at nozzle exit gas velocities greater than 750 m/sec calculated at 293 K at 1 atmosphere;

(2) Operating at reduced pressure controlled atmosphere (less than or equal to 100 millibar (0.1 atm) measured above and within 30 cm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 10^{-4} millibar prior to the spraying process; *or*

(3) Incorporating in situ coating thickness control;

(e) "Stored program controlled" "sputter deposition" production equipment capable of current densities of 5 mA/cm^2 or higher at a deposition rate of 10 micrometers/hr or higher;

(f) "Stored program controlled" "cathodic arc deposition" production equipment with either of the following characteristics:

(1) Incorporating target areas larger than 45.6 cm^2; *or*

(2) Incorporating a magnetic field steering control of the arc spot on the cathode;

(g) Deposition process or surface modification equipment for "stored program controlled" production processing that enables the combining of individual deposition processes controlled for export by paragraphs (a) through (f) of this ECCN so as to enhance the capability of such individual processes.

TECHNICAL NOTES: 1. For the definitions of the coating processes specified in paragraphs (a) through (g) of the List of Equipment, see the Table in Supplement No. 4 to Part 779.

2. Coating processes include original coating as well as coating repair and refurbishing.

3. For coating technical data, see the Table in Supplement No. 4 to Part 379. Although the equipment for "electrophoretic deposition", "pack cementation" and "slurry deposition" processes is not considered sensitive because of its universal use, the technical data for use of this equipment, as identified in the Table in Supplement No. 4 to Part 779, remains controlled for export.

4. For the definition of "stored program controlled", see ECCN 1355A.

5. The status of coating and surface modification equipment for non-electronic substrates using lasers is defined in this ECCN.

NOTE: Reserved.

1391A "Robots", "robot" controllers and "robot" end-effectors; and specially designed components therefor.

NOTE: See also § 779.4(f)(1)(i)(*k*) and § 779.4(g).

Controls for ECCN 1391A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

NOTES: 1. Mechanical structures for "robots" are included in specially designed components for the above.

2. For simulation "software" used in the evaluation, design and optimization of robotic systems, see Supplement No. 3 to Part 379.

List of Equipment Controlled by ECCN 1391A

(a) "Robots" having any of the following characteristics:

(1) Capable of employing feedback information in "real-time processing" from one or more "sensors" to gener-

ate or modify "programs" or to generate or modify numerical program data;

(2) Specially designed to comply with national safety standards applicable to explosive munitions environments;

(3) Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g., incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839°K (566 °C or 1050 °F);

(4) Specially designed for underwater use (*i.e.*, incorporating special techniques or components for sealing, pressure compensation, or corrosion resistance);

NOTES: 1. This paragraph (a) does not control "robots" capable of using information derived only from "sensors" that can be used to measure:

(a) The internal state of the "robot", i.e., velocity, position (by other than inertial position measuring systems), drive motor current or voltage, fluid or gas pressure or temperature;

(b) Through-the-arc current (or voltage) for weld seam tracking; *or*

(c) Binary or scalar values for:

(1) Determining the position of the "robot" relative to a work piece;

(2) Tool drive motor voltage or current or hydraulic/pneumatic pressure for determination of force or torque; *or*

(3) External safety functions.

2. This paragraph (a) does not control "robots" capable of using information derived only from vision system limited as follows":

(a) Capable of processing no more than 100,000 pixels using an industrial television camera, or no more than 65, 536 pixels using a solid-state camera;

(b) Using a single-scene analysis processor having neither a word size of more than 32-bit (excluding parity bits) nor parallel processing for the same task;

(c) "Software" not capable of full three-dimensional mathematical modeling or full three-dimensional scene analysis;

NOTE: This scene analysis limitation precludes neither approximation of the third dimension by viewing at a given angle, nor limited gray scale interpretation for the perception of depth or texture for the approved tasks (2½ D);

(d) Having no "user-accessible programmability" other than by input reference images through the system's camera; *or*

(e) Capable of no more than one scene analysis every 0.1 second.

3. This paragraph (a) does not control "robots" capable of using information derived only from "end-effectors" not controlled by paragraph (c) of this ECCN.

4. "Software" provided for "robots" released by Notes 2 or 3 shall be in "object code" only.

5. Documentation provided for "robots" released by Notes 2 or 3 shall not exceed that necessary to perform the operation, repair or maintenance of the "robot".

NOTE: For underwater manipulatory mechanisms, see ECCN 1417A.

(For other underwater manipulator mechanisms, see ECCN 1417A.)

(5) Operable at altitudes exceeding 30,000 meters;

(6) Specially designed for outdoor applications and meeting military specifications therefor;

(7) Specially designed or rated for operating in an electromagnetic pulse (EMP) environment;

(8) Specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (*i.e.*, non-nuclear industry) ionizing radiation;

(9) Equipped with "robot" manipulatory arms that contain fibrous and filamentary materials controlled by ECCN 1763A;

(10) Equipped with precision measuring devices controlled by ECCN 1099A; *or*

(11) Specially designed to move autonomously its entire structure through three-dimensional space in a simultaneously coordinated manner, *except* systems in which the "robot" moves along a fixed path;

NOTE: Sub-item (a) above does not control "robots" specially designed for household use or those modified from household "robots" for educational purposes (pre-university) if not controlled for export by the other provisions of this ECCN.

(b) Electronic controllers for "robots" having any of the following characteristics:

NOTES: 1. For controllers capable of controlling 'numerically controlled' machine tools or dimensional inspection machines, see ECCN 1091A.

2. For "digital computers" not "embedded" in controllers, see ECCN 1565A.

(1) Controllers specially designed to be part of a "robot" controlled by subparagraphs (a)(2) to (a)(8), (a)(10) or (a)(11) above;

(2) Minimum programmable increment less (finer) than 0.001 mm per linear axis;

(3) Capable of being programed by means other than lead-through, key-in (i.e., without processing, on-line or off-line) or teach-pendant techniques;

(4) Word size exceeds 32 bit (excluding parity bits);

(5) Incorporating interpolation algorithms for an order of interpolation higher than two;

(6) Generation or modification of the programmed path, velocity and functions other than the following, by on-line, "real-time processing":

(i) Manual velocity override;

(ii) Linear, rotary or Cartesian offset;

(iii) Manual "robot" path editing (including manual path compensation) excluding "source language" used to program automatically the "robot" path, velocity or function;

(iv) Branching to pre-programmed modification of "robot" path, velocity or function;

(v) Fixed cycles (e.g., macro instructions or pre-programmed sub-routines) *or*

(vi) Key-in or teach-in modifications;

NOTE: Paragraph (b)(6) does not control controllers limited to operations with "robots" described in Notes 1, 2, or 3 to paragraph (a)(1).

(c) "End-effectors" having any of the following characteristics:

(1) Having integrated computer-aided data processing, *except* those using "sensors" used to measure the parameters or values specified in Note 1 to paragraph (a)(1);

(2) Having any of the characteristics in (a) (2) to (8) and (a)(10).

NOTES: 1. Definitions of the terms used in this ECCN:

(a) For the purposes of this ECCN, a "robot" is a manipulation mechanism that may be of the continuous path or of the point-to-point variety, may use "sensors", and has all the following characteristics:

(1) Is multifunctional;

(2) Is capable of positioning or orienting material, parts, tools or special devices through variable movements in three dimensional space;

(3) Incorporates three or more closed or open loop servo-devices that may include stepping motors; *and*

(4) Has "user-accessible programability" by means of teach/playback method or by means of an electronic computer that may be a programable logic controller, i.e., without mechanical intervention.

(b) "End-effectors" include grippers, "active tooling units" and any other tooling that is attached to the baseplate on the end of the "robot's" manipulator arm(s).

(An "active tooling unit" is a device for applying motive power, process energy or sensing to the workpiece.)

(c) For the purposes of this ECCN, a "sensor" is defined as a detector of a physical phenomenon, the output of which (after conversion into a signal that can be interpreted by a controller) is able to generate "programs" or modify programmed instructions or numerical program data. This includes "sensors" with machine vision, infrared imaging, acoustical imaging, tactile feel, inertial position measuring, optical or acoustic ranging or force or torque measuring capabilities.

NOTE: For computer-related terms, see ECCN 1565A.

NOTE 2: This ECCN 1391A does not control:

(a) "Robots" controlled for export by paragraph (a) of this ECCN 1391A that are for civil use and not covered by paragraphs (a)(2) to (a)(8), (a)(10) or (a)(11);

(b) Electronic controllers described in paragraph (b) for the control of "robots" eligible for treatment under this Note;

(c) "End effectors" controlled by paragraph (c) for use with "robots" eligible for treatment under this Note;

(d) Vision systems, limited as follows:

(1) Capable of processing no more than 100,000 pixels using an industrial television camera, or no more than 65,536 pixels using a solid-state camera;

(2) Not programmable by the user except:

(i) To input reference images through the system's camera;

(ii) To input values of fixed parameters, including teach-in parameters; *or*

(iii) To select pre-programmed sub-routines;

(3) Not capable of continuous reaction or continuously updating the "robot" position while the "robot" is moving;

NOTE: This limitation precludes the use of vision systems for weld seam tracking during the welding operation but does not preclude straight-line or single-plane weld seam tracking using a single pass.

(4) Capable of no more than one scene analysis every 0.02 second;

(5) The "software" provided for the vision processor shall be in "object code" only and shall not be capable of full three-dimensional mathematical modeling or full three-dimensional scene analysis.

NOTE: This scene analysis limitation does not preclude approximation of the third diception by viewing at a given angle, nor limited gray scale interpretation for the perception of depth or texture for the approved tasks (2½D).

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "robots" equipped with vision systems capable of processing no more than 200,000 pixels using an industrial television camera or a solid-state camera.

6394F Diesel engines for tractors, mobile machines and equipment, and mobile industrial applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25° C), n.e.s.; other marine engines, n.e.s.; and specially designed parts for the above engines.

Controls for ECCN 6394F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: $0.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled or used by or for these entities. See § 785.4(a).

5398F Self-contained underwater breathing apparatus (scuba gear) and related equipment.

Controls for ECCN 5398F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z and Iran.

GLV $ Value Limit: $0.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5398F Self-contained underwater breathing apparatus (scuba gear) and related equipment, including, but not limited to, the following:

(a) Self-contained underwater breathing apparatus (scuba gear);

(b) Pressure regulators, air cylinders, hoses, valves and backpacks for the apparatus described in paragraph (a);

(c) Life jackets, inflation cartridges, compasses, wetsuits, masks, fins, weight belts, and dive computers;

(d) Underwater lights and propulsion equipment; and

(e) Air compressors and filtration systems specially designed for filling air cylinders.

6399G General industrial equipment, n.e.s., and parts and accessories therefor.

Controls for ECCN 6399G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ, and as required by Special South Africa policy below.

GLV $ Value Limit: General License GLV is not applicable; however, other general licenses may be applicable.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to, or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled or used by or for these entities. See § 785.4(a).

GROUP 4—TRANSPORTATION EQUIPMENT

Notes: You need a validated export license to export or reexport technical data related to transportation equipment to destinations in Country Groups Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations); *Provided,* That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

2406A Vehicles specially designed for military purposes and specially designed components therefor, excluding vehicles listed in Supp. No. 2 to Part 770.

Controls for ECCN 2406A

Unit: Report vehicles and engines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM for items in paragraph (b); TE for all other items.

Reason for Control: National security; foreign policy.

Special South Africa Controls: Commodities defined in ECCN 2406A are subject to the Republic of South Africa embargo policy, and no technical data relating to those commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Regional Stability Controls: 1. A validated export license is required for foreign policy purposes to export military vehicles and certain commodities (specially designed) used to manufacture military equipment defined in this ECCN to any destination except Australia, Japan, New Zealand, and members of NATO. Applications for validated licenses will generally be considered favorably on a case-by-case basis unless there is evidence that the exports would contribute significantly to the destabilization of the region to which the equipment is destined.

2. A validated export license is required for foreign policy purposes for the export to People's Democratic Republic of Yemen, Libya, and Syria (countries that have repeatedly provided support for acts of international terrorism) of military vehicles and items specially designed to produce military equipment as defined in this ECCN.

Special Licenses Available: None.

Commodity Interpretation:

(a) Military automotive vehicles:

(1) For purposes of U.S. export controls, military automotive vehicles "possessing or built to current military specifications differing materially from normal commercial specifications" may include, but are not limited to, the following characteristics:

(i) Special fitting for mounting ordnance or military equipment,

(ii) Bulletproof glass,

(iii) Armor plate,

(iv) Fungus preventive treatment,

(v) Twenty-four volt electrical systems,

(vi) Shielded electrical systems (electronic emission suppression), or

(vii) Puncture-proof or run-flat tires.

(2) These automotive vehicles fall into two categories:

(i) Military automotive vehicles on the Munitions List, new and used. Automotive vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, "designed for specific fighting function." These automotive vehicles are licensed by the U.S. Department of State. See list with descriptions, Supp. No. 2 to Part 770, Category VII.

(ii) Military automotive vehicles not on the U.S. Munitions List, new and used. Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for towing other vehicles and equipment over land and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed by the U.S. Department of Commerce.

(b) *Components for military automotive vehicles.* (1) Functional components are defined as those components making up the power train of the vehicles, the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. (Components specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State.)

(2) The following are examples of specially designed components for specially designed military vehicles:

(i) Pneumatic tire casings of a kind specially constructed to be bulletproof or to run when deflated (excluding types for agricultural and garden tractors and farm implements); and

(ii) Engines for the propulsion of the vehicles described in this ECCN 2406A specially designed or essentially modified for military use, including specially designed components therefor.

(c) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described above. Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general license or submitting an application to the Office of Export Licensing for an export license.

2409A Naval equipment.

Controls for ECCN 2409A

Unit: Report engines and motors in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ, except marine water tube boilers, which require a validated license only for Country Groups QSWYZ, the People's Republic of China and Afghanistan.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Naval Equipment Controlled by ECCN 2409A

(a) Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

(b) Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

(c) Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

(d) Other magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes; and controls and components thereof;

(e) Marine boilers designed to have *any* of the following characteristics:

(1) Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; or

(2) Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83;

(f) Submarine and torpedo nets; and

(g) Components, parts, accessories, and attachments for the above.

2410A Equipment specially designed for military purposes.

Controls for ECCN 2410A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; foreign policy.

Special South Africa Controls: Commodities defined in paragraph (c) of the List below are subject to the Republic of South Africa embargo policy, and no technical data relating to those commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Licenses Available: See Part 773.

List of Equipment Specially Designed for Military Purposes Controlled by ECCN 2410A

(a) Pressure refuellers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas; and ground equipment, n.e.s., developed specially for military aircraft and helicopters, and specially designed parts and accessories, n.e.s.;

(b) Pressurized breathing equipment specially designed for use in military aircraft and helicopters; and

(c) Military parachutes and complete canopies, harnesses, and platforms and electronic release mechanisms therefor, *except such types as are in normal sporting use.*

NOTE: This entry controls parachute systems designed for use in dropping personnel only. Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery are licensed by the U.S. Department of State. See the U.S. Munitions List, Category VIII, Supp. No. 2 to part 770.

2414A Specialized military training equipment.

Controls for ECCN 2414A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

List of Specialized Military Training Equipment Controlled by ECCN 2414A

(a) Military instrument flight trainers, except for combat simulation;

(b) Components, parts, attachments and accessories specially designed for such equipment.

NOTE: Instrument flight trainers for combat simulation require export authorization from the U.S. Department of State, Office of Munitions Control. See Supp. No. 2 to Part 770.

1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

Unit: Report vessels or vehicles in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1416A

(a) Hydrofoil vessels with automatically controlled foil systems capable of speeds of above 40 knots in rough water (Sea State Five);

(b) Surface-effect vehicles, i.e., hovercraft, air cushion vehicles (both sidewall and skirted varieties) and all variations of vehicles using the wing-in-ground effect for positive lift, *except hovercraft having all of the following characteristics:*

(1) *Designed to carry fewer than 5 passengers including the driver;*

(2) *Dry mass less than 500 kg;*

(3) *Maximum speed less than 50 knots (90 km/h) at Sea State 0; and*

(4) *Not designed for operation above Sea State 3;*

(c) Small waterplane area twin-hull (SWATH) vessels having underwater hulls whose cross-sectional area varies along the longitudinal axis between points two major diameters from the bow and two major diameters from the stern;

TECHNICAL NOTE: SWATH vessels are those that maintain buoyancy by means of submerged hulls using slender struts to support the deck and superstructure of the vessel above the waterline.

(d) Vessels incorporating:

(1) Equipment covered by any Item on the U.S. Department of State Munitions List (See Supp. No. 2 to Part 770) or by ECCNs 1485A, 1501A, 1502A or 1510A;

(2) Degaussing facilities; *or*

(3) Closed ventilation systems designed into the vessel that are designed to maintain air purity and positive pressure regardless of the conditions external to the vessel, *except where those closed ventilation systems are specially designed for and incorporated in the vessel's medical facilities only;*

NOTE: Sub-paragraph (1) above does not apply to vessels containing equipment included in Advisory Notes to ECCNs 1485A, 1501A, 1502A or 1510A.

(e) Water-screw propellers and hub assemblies, as follows:

(1) Supercavitating propellers rated at more than 7.46 MW (10,000 hp);

(2) Controllable-pitch propellers and hub assemblies rated at more than 29.83 MW (40,000 hp) capacity;

(f) Water-screw propeller systems, as follows:

(1) Contrarotating propeller systems rated at more than 14.92 MW (20,000 hp);

(2) Ventilated, base ventilated and super-ventilated propeller systems and semi-submerged propeller systems (or surface propellers) rated at more than 2.24 MW (3,000 hp);

(3) Systems employing pre-swirl and post-swirl techniques for smoothing the flow into a propeller so as to improve the propulsive efficiency of:

(i) SWATH vessels, hydrofoil vessels and surface-effect vehicles; *or*

(ii) Other vessels with propeller rotational speeds above 220 rev/min. or with propellers rated at more than 44.74 MW (60,000 hp) per shaft;

(4) *"Pumpjet Systems";*

NOTE: Subparagraph (4) above does not control technical data for flow conditioning vane techniques equipment.

TECHNICAL NOTE: "Pumpjet systems" are propulsion systems that utilize divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion generated underwater radiated noise.

(g) Moisture and particulate separator systems capable of removing 99.9% of particles larger than 2 micrometers in diameter with a maximum pressure loss of 1.6 kPa (16 millibar) for gas turbine engine air inlets.

(h) Specially designed components for vessels controlled by paragraphs (a), (b) and (c) of this List, as follows:

(1) Advanced hull forms that incorporate any of the following:

(i) Stepped hulls for hyrofoil vessels;

(ii) Hulls for air cushion vehicles with trapezoidal planforms;

(iii) Hulls for surface-effect vehicles with catamaran-like sidewalls;

(iv) Hulls for wing-in-ground effect vehicles;

(v) Underwater hulls and struts for SWATH vessels;

(2) Fully submerged subcavitating or supercavitating hydrofoils;

(3) Lightweight structural components for SWATH vessels, hydrofoil vessels and surface-effect vehicles, constructed using anisotropic, orthotropic or sandwich construction methods;

(4) Flexible skirts, seals and fingers for surface-effect vehicles;

(5) Active systems for automatically controlling the stability of SWATH vessels, hydrofoil vessels or surface-effect vehicles;

(6) Power transmission shaft systems that incorporate composite material components for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(7) Lightweight, high capacity (K factor higher than 150) gearing (planetary, cross-connect and multiple input-output gears and bearings) for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

TECHNICAL NOTE: For the K factor, see AGMA tables of K factor values (based on tooth profile, pinion and gear materials and surface endurance limits).

(8) Water-cooled electrical propulsion machinery (motor and generator), including AC-AC synchronous and AC-DC systems, sectored-disc and concentric-drum rotors for DC homopolar machines for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(9) Superconducting electrical propulsion machinery for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(10) Lift fans for surface-effect vehicles, rated at more than 300 kW (400 hp);

(11) Waterjet propulsor systems for hydrofoil vessels and surface-effect vehicles rated at an input of 2.24 MW (3,000 hp) or more.

TECHNICAL NOTES:

1. Anisotropic construction methods relate to the use of fiber reinforcing members aligned so that the load-carrying ability of the structure can be primarily orientated in the direction of expected stress.

2. Orthotropic construction methods relate to means of stiffening plates, in which the structural memgers are at right angles to each other.

3. Sandwich construction methods relate to the use of structural members of plates fabricated and permanently affixed in layers to enhance their strength and reduce their weight.

NOTE: Sub-paragraph (1) above does not apply to vessels containing

(See also Categories VI and VIII on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370.)

(For marine gas turbine engines, see also ECCN 1431A.)

1417A Submersible systems (including those incorporated in a submersible vehicle) and specially designed components therefor.

NOTE: For "specially designed software", see Supp. No. 3 to part 779.

Controls for ECCN 1417A

Unit: Report in "number".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Environmental control systems, navigation systems, and remotely controlled articulated manipulators controlled by paragraphs (a), (b), and (d), respectively.

Processing Code: TE

Reason for Control: National Security.

Special Licenses Avialable: See Part 773.

List of Equipment Controlled by ECCN 1417A

Submersible systems, as follows, even when incorporated in a submersible vehicle:

(a) Automatically controlled atmosphere regeneration systems specially designed or modified for submersible vehicles that, in a single chemical reaction cycle, ensure carbon dioxide removal and oxygen renewal;

(b) Systems specially designed or modified for the automated control of the motion of a submersible vehicle using navigation data and having closed-loop servo-control(s) so as to:

(1) Enable the vehicle to move within ten meters of a predetermined point in the water column;

(2) Maintain the position of the vehicle within ten meters of a predetermined point in the water column; or

(3) Maintain the position of the vehicle within ten meters while following a cable on or under the sea bed;

(c) Underwater vision systems, as follows:

(1) Television systems (comprising camera, lights, monitor and signal transmission equipment) specially designed or modified for remote operation with a submersible vehicle, having a "limiting resolution", when measured in the air, or more than 500 lines, or underwater television cameras having a "limiting resolution", when measured in the air, of more than 600 lines, using IEEE Standard 208/1960 or any equivalent standard;

TECHNICAL NOTE: "Limiting resolution" in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart.

(2) Systems specially designed or modified for remote operation with a submersible vehicle employing techniques to minimize the effects of backscatter, including range-gated illuminators and laser systems;

Note: Export controls of underwater vision systems using lasers is defined in this ECCN.

(d) Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles and having any of the following characteristics:

(1) Systems that control the manipulator using information from sensors that measure force or torque applied to an external object, distance from an external object, or tactile sense between the manipulator and an external object;

(2) Controlled by proportional master-slave techniques or by using a dedicated stored-program computer; *or*

(3) Capable of exerting a force of 250 Newtons or more or a torque of 250 Newton-meters or more and using titanium based alloys or fibrous and filamentary composite materials in their structural members.

(For underwater "robots", see ECCN 1391A.)

(e) Photographic cameras and associated equipment specially designed or modified for underwater use, having a film format of 35mm or larger, incorporating any of the following:

(1) Film advancement of more than 5 frames per second;

(2) Annotating the film with data provided by a source external to the camera;

(3) Taking more than 400 full frame exposures without changing the film;

(4) Autofocusing or remote focusing specially designed or modified for underwater use;

(5) Automatic back focal distance correction;

(6) Passive or automatic compensation control specially designed to permit underwater camera housings to be usable at depths exceeding 1,000 meters;

(7) Titanium underwater camera housings specially designed for depths exceeding 1,000 meters; *or*

(8) Automatic exposure control by using sensing devices in or external to the camera, if the camera is capable of operating at depths of more than 300 meters;

(f) Light systems, as follows, specially designed or modified for underwater use:

(1) Stroboscopic lights capable of:

(i) Light output energy of more than 250 Joules per flash; *or*

(ii) Flash rates of more than 5 flashes per second at a light output energy of more than 10 Joules per flash;

(2) Other lights and associated equipment, designed for operation with equipment controlled by paragraph (e)(1) or (e)(8) above;

(g) Specially designed components for the equipment controlled by paragraphs (a) through (f) above;

(h) Air-independent power systems and specially designed components therefor, as follows, specially designed for underwater use:

(1) Brayton, Stirling or Rankine Cycle Engine air-independent power systems having any of the following characteristics:

(i) Specially designed chemical scrubber or absorber subsystems to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

(ii) Specially designed subsystems for utilizing a monoatomic gas;

(iii) Specially designed devices for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *or*

(iv) Specially designed systems for pressurizing products of reaction or for fuel reformation, specially designed systems for the storage of products of the reaction, and specially designed systems for discharging the products of the reaction against a pressure of 100 kP (1 bar, 15 lb/sq. in.) or more;

(2) Diesel Cycle Engine air-independent systems having all of the following characteristics:

(i) Specially designed chemical scrubber or absorber subsystems to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

(ii) Specially designed subsystems for utilizing a monoatomic gas;

(iii) Specially designed devices for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *and*

(iv) Specially designed exhaust systems that do not continuously exhaust products or combustion;

(3) Alkaline, phosphoric acid or ion exchange membrane fuel cell air-independent power systems with an output exceeding 2 kW and operating at a temperature of less than 523K (250 °C), having any of the following characteristics:

(i) Specially designed enclosures for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *or*

(ii) Specially designed systems for pressurizing products of reaction or for fuel reformation, specially designed systems for the storage of products of the reaction, and specially designed systems for discharging the products of the reaction against a pressure of 100 kP (1 bar, 15 lb/sq. in.) or more; *and*

(4) Specially designed components for subsystems controlled by paragraphs (h)(1)(iii) or (h)(3)(i) or described in (h)(2)(iii) above;

NOTE: [Reserved]

(For electromechanical, semiconductor and radioactive devices, see ECCN 1205A.)

(For underwater "robots", see ECCN 1391A.)

NOTES:

1. This ECCN does not control specially designed components for equipment that would not have been controlled for export had it not been modified.

2. Sub-paragraph (a) controls equipment using light metal peroxides such as KO_2 without controlling the shipment of KO_2 itself.

3. Sub-paragraph (b) does not control automated control systems incorporated in underwater bulldozers or trench-cutters not capable of operating at depths of more than 100 meters and possessing only negative buoyancy.

4. Sub-paragraph (c) does not control television cameras used merely through a porthole.

5. Sub-paragraph (d)(1) does not control systems where force or torque are only measured and then displayed to the operator.

1418A Deep submergence vehicles and autonomous submersible vehicles.

Controls for ECCN 1418A

Unit: Report vessels or vehicles in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1418A

Deep submergence vehicles and autonomous submersible vehicles as follows: (a) Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed or modified associated systems and equipment therefor, including the following:

(1) Pressure housings or pressure hulls;

(2) Propulsion motors and thrusters;

(3) Hull penetrators or connectors;

(b) Other manned underwater vehicles that may "operate autonomously" for ten hours or more provided their maximum "range" underwater exceeds 15 nautical miles.

TECHNICAL NOTE: Definition of terms used in this ECCN 1418A:

"Operate autonomously." Fully submerged, without snorkel, all systems working and cruising minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

"Range." Half the maximum distance the vehicle can cover.

(For hull penetrators for military use, see Category VI on the U.S. Department of State Munitions List, Supp. No. 2 to Part 770.)

2418A Manned submersible vehicles that may be discretely operated with an autonomy equal to or greater than 10 hours.

Controls for ECCN 2418A

Unit: Report vehicles in "number"; parts and accessories in "$ value."

Validated Licensed Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

1431A Marine gas turbine engines (marine propulsion or shipboard power generation engines), whether originally designed as such or adapted for such use, and specially designed components therefor.

Controls for ECCN 1431A

Unit: Report engines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

Technical Data: Exports of certain technical data relating to marine gas turbine engines and components thereof require a validated license to all destinations except Canada (see § 379.4(d)(22)).

NOTES: 1. Control of aero or industrial gas turbine engines and their specially designed components that have been adapted for marine propulsion or shipboard power generation does not re-control (or control, for industrial gas turbine engines) the unmodified version of such engines and their specially designed components (see also ECCN 1460A).

2. Shipboard power generation does not include offshore platform applications.

(ADVISORY) NOTE 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of engines and their specially designed components covered by this ECCN for non-marine propulsion or non-shipboard civil end-use, provided that:

(a) The numbers to be exported are appropriate for the stated end-use;

(b) Only the minimum necessary technical data for operation, maintenance and repair are transferred; *and*

(c) None of the following technical data are transferred:

(1) Technical data that are common to aero-engine technical data controlled by § 379.4(d)(1) and that are not described under Note 8 in ECCN 1460A;

(2) Technical data for liquid-cooled turbine blades or vanes and nozzles capable of operating in hot gas temperature environments greater than 1,000°C and their associated systems;

TECHNICAL NOTE: "Associated systems" are closely connected to the engine and consist of the specially designed cooling fluid and fuel control systems, pumps, condensers and fluid purification systems;

(3) Technical data for fuel nozzles, combustors and gas turbine engine-mounted fuel-handling systems (fuel pumping, metering and controls) that permit marine gas turbines to burn heavy residual fuel oils (ASTM grades 5 and 6 or equivalent);

TECHNICAL NOTE: ASTM grade 5 residual fuel oil has a maximum kinematic viscosity of 81 centistrokes at 50°C (122°F), and ASTM grade 6 residual fuel oil has a kinematic viscosity range of 92 to 638 centistrokes at 50°C (122°F). Kinematic viscosity is measured by the Saybolt-furol viscosimeter (the test measures the time in seconds for 60 cc of the oil to pass through the furol orifice).

(4) Technical data for high-temperature (above 700°C gas temperature) heat exchangers for pre-heating compressor exit air;

(5) Technical data for lightweight, compact combined gas turbine and steam (COGAS) systems having heat recovery rates of more than 40,000 BTU/hr. per cubic foot of waste heat boiler volume or more than 1000 BTU/hr. per pound of waste heat boiler weight, designed for use with gas turbine engines for marine propulsion or shipboard power generation.

NOTE 4: Core-section modules and specially designed components covered by ECCN 1460A shall be treated under the provisions of that ECCN, even if the gas turbine aero-engine has been modified for use in marine propulsion or shipboard power generation.

NOTE 5: [Reserved]

NOTE 6: [Reserved]

1460A Aircraft and helicopters, including tilt wing and tilt rotor aircraft, aero-engines and aircraft and helicopter equipment.

NOTE: For "software", see Supp. No. 3 to Part 779.

Controls for ECCN 1460A

Unit: Report aircraft, helicopters, and engines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Helicoper power transfer systems, gas turbine engines and auxiliary power units, and specially designed components controlled by paragraphs (b), and (c), and (d).

Processing Code: TE.

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to paragraphs (c), and (d) as applicable to (c), of the List below for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient. The following small fuel efficient gas turbine aero engines described in paragraph (c) are subject to these foreign policy controls: Gas turbine aero-engines, uncertified or certified, with 2,000 pounds thrust or less (un-installed) and with a thrust specific fuel consumption (CSFC) for maximum power at sea level static, standard day, equal to or less than 0.45 lb./lb./hr.

Special Licenses Available: None for commodities defined in paragraphs (a) and (b) of the List below nor for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1460A.

Technical Data: Exports of most technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 779.4(d)(1) for exceptions to this policy.

Special Foreign Policy Controls: 1. For commodities defined in paragraph (a) of the List below, foreign policy controls apply to Libya, Iran, Syria, and the Republic of South Africa for both aircraft and helicopters regardless of value, and to the People's Democratic Republic of Yemen for fixed-wing aircraft valued at $3,000,000 or more, and for all helicopters (except aircraft and helicopters for use by regularly scheduled airlines, subject to certain assurances—see § 785.4(d)(2)).

2. For commodities defined in paragraphs (b), (c), and (d) of the List below, foreign policy controls apply only to Libya, Iran and Syria.

NOTE: Nonmilitary aircraft designed to carry up to a maximum of 25 persons, including crew, may be exported under the Distribution License to all normally eligible countries, except Libya, Syria, the People's Democratic Republic of Yemen, and the Republic of South Africa.

NOTE: Bulk licenses may not be used to provide aircraft parts and accessories to aircraft owned, operated, or controlled by, or under charter or lease to Libya or any of its nationals.

List of Nonmilitary Equipment Controlled by ECCN 1460A

(a) Aircraft and helicopters, except those that do not contain equipment listed in Supp. No. 2 to Part 770 or that is controlled under ECCNs 1485A, 1510A or any ECCN beginning with the numeral 2 and are of types in bona fide normal civil use (Specify make and model of aircraft and type of avionic equipment installed on aircraft.); and

(b) "Helicopter power transfer systems" *except* those destined for use in civil helicopters only, as follows:

That have been in civil use in bona fide "civil helicopters" for more than eight years (Helicopter power transfer systems in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ);

NOTE: Individual validated licenses will be granted for "helicopter power transfer systems" destined for use in "civil helicopters" where the systems are for replacement in or servicing of specific, previously exported helicopters, if all other conditions for export are met.

(c) Gas Turbine engines and auxiliary power units (APUs) for use in aircraft or helicopters, *except* those destined for use in "civil aircraft" or "civil helicopters" only as follows:

(1) Jet, turboprop and turboshaft aircraft engines in civil use in bona fide "civil aircraft" or "civil helicopters" for more than eight years (Jet, turboprop and turboshaft aircraft engines in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ);

(2) Gas turbine powered aircraft APUs in civil use in bona fide "civil aircraft" or "civil helicopters" for more than eight years (Gas turbine powered aircraft APU's in civil use for

more than eight years require a validated export license to destinations in Country Groups QSWYZ);

(d) Specially designed components for gas turbine engines, APUs and "helicopter power transfer systems", controlled by sub-paragraphs (b) and (c) above, as follows:

(1) Embodying technologies listed under Notes 8 or 9;

(2) Engine hot-section components;

(3) Engine control system components;

(4) Gas turbine engine or APU rotor system components (including bearings);

(Aero-engines, APUs or "helicopter power transfer systems" that have any special feature designed for a military application are controlled by the Department of State. (See Supp. No. 2 to Part 770.) For industrial gas turbine engine components, see ECCN 1372A; for marine gas turbine engines, see ECCN 1431A.)

NOTE 1: [Reserved]

NOTE 2: The period of bona fide civil use referred to in sub-paragraphs (b) and (c) above begins with the date that the particular engine or "helicopter power transfer system" (model and specifications) or its most recent modification was certified as airworthy for commerical service by the Federal Aviation Administration (FAA). However, it is recognized that many modifications that may require recertification may pertain to minor safety or operational changes that do not significantly enhance the performance of a particular gas turbine aero-engine or improve its reliability.

(a) A gas turbine aero-engine recertified as the result of incorporating any technology listed in Note 8 will be treated as a newly certified engine. Recertification that does not result from incorporation of such technology, or modifications that do not require recertification by the FAA, will not affect the current period of civil use of the engine;

(b) Modification of a gas turbine APU by incorporation of any technology listed in Note 8 will cause it to be treated as a new APU. Other modifications will not affect the current period of civil use of the APU;

(c) Modification of a "helicopter power transfer system" by incorporation of any technology listed in Note 9 will restart the control period for the "helicopter power transfer system" as though it were newly certified in a helicopter. Other modifications will not affect the current period of civil use of the "helicopter power transfer system".

NOTE 3: "Helicopter power transfer systems" referred to in sub-paragraph (b) above are defined as all those components that transfer power from the engine to the main and tail rotor blade(s).

NOTE 4—5 [Reserved]

(ADVISORY) NOTE 6: (The following commodities described in this note are not eligible for general licenses GFW and G-COM: Small fuel efficient gas turbine aero engines controlled by paragraph (c) in the List of this ECCN and specially designed components for these engines controlled by paragraph (d) in the List of this ECCN. Small fuel efficient gas turbine aero engines are those, uncertified or certified, with 2,000 pounds thrust or less (un-installed) and having a thrust specific fuel consumption (CSFC) for maximum power at sea level static, standard day, equal to or less than 0.45 lb./lb./hr.) Licenses are likely to be approved for export to satifactory end-users for civil end-uses in Country Groups QWY of the following equipment:

(a) "Helicopter power transfer systems" controlled by sub-paragraph (b) above for incorporation in bona fide "civil helicopters";

(b) Gas turbine engines or APUs controlled by sub-paragraph (c) above for incorporation in bona fide "civil aircraft" or "civil helicopters";

(c) Specially designed components controlled by sub-paragraph (d) above, for use in engines, APUs or "helicopter power transfer systems", as follows:

(1) Produced for use in bona fide "civil aircraft" or "civil helicopters" in appropriate quantities; *or*

(2) To support the assembly of that number of "helicopter power transfer systems", engines or APUs required for installation in, and as standard spares for, bona fide "civil aircraft" or "civil helicopters" in current production; *or*

(3) To support current civil fleet operations.

NOTE 7: [Reserved]

NOTE 8: Listing of aero-engine/APU design, manufacturing, construction and fabrication technologies affecting the period of bona fide civil use referred to in Note 2, and affecting components identified in (d)(1) above.

I. MATERIALS AND MANUFACTURING PROCEDURES

Ceramic, ceramic composite or composite hot-section components (combustor, turbine blades and vanes, seals, discs, flow path).

Turbine blades on basis of directional solidification capable of operating in high gas temperature environments (in excess of 1,593K (1,320 °C)).

Turbine blades on basis of monocrystal technology.

Turbine blades consisting of several parts connected by diffusion bonding.

Fiber technology in frames or in highly stressed discs, casings, blades and vanes.

Irrespective of the actual gas temperature environment in which they will be used, involving applications of metallic or ceramic materials by vapor, pack, plasma, electron beam, sputtering or sintering processes.

Application of powder metallurgy for fan, compressor and turbine blades or vanes; discs, wheels, reduction gears, engine main shafts and frames.

Discs
Fans, compressor and turbine blades or vanes, wheels, reduction gears, engine main shafts and frames

Cooled components on basis of electrostream or laser drilling methods.

Electrostream drilling
Laser drilling

Electron beam drilling for small holes in turbine blades and vanes (ECCN 1080A(c) sets out the parameters for small holes).

Titanium or super alloy casting on basis of centrifugal techniques.

Ceramic core casting technology for casting holes in turbine blades and vanes.

II. CONSTRUCTION METHODS

Adjustable flow path geometry and associated control systems for:

Fans
Gas generator turbine(s)
Fan/power turbine(s)
Propelling nozzles

(Adjustable flow path geometry and associated control systems do not include: inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.)

Full authority or hybrid digital electronic control and respective sensor equipment.

High temperature (capable of utilizing gases heated above 1100 °C heat exchangers for preheating compressor exit air.

Combustors with combustion in several stages.

Maintenance of compressor or turbine tip clearance through methods employing active compensating casing technology:

Compressor alone
Turbine alone
Compressor and turbine

Ceramic bearings.

Nozzles with thrust vectoring (not including reverse thrust).

NOTE 9: Listing of helicopter power transfer system design, manufacturing, construction and fabrication technologies affecting the periods of bona fide civil use referred to in Note 2, and affecting components identified in (d)(1) above.

I. MATERIALS AND MANUFACTURING PROCEDURES

A. Rotor heads, containing:

Hot-isostatically pressed materials

B. Gears boxes, containing:

Novikoff-type gears
Gears or gear support structures based on materials applying directional solidification or monocrystal technology
High contact-ratio double-helical (arrow shaped) gears
Fiber technology
Hot-isostatically pressed components
Gear tooth surfaces hardened by vacuum carburizing or ion nitriding

C. Drive shaft systems containing super critical drive shafts.

II. CONSTRUCTION METHODS

A. Components fabricated by diffusing bonding.

B. High-survivability loss-of-lubrication technology for high-speed bearings (DN equal to or greater than 2.4 million where D is expressed in millimeters and N in rpm).

ADVISORY NOTE FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of aircraft and helicopters considered to be of types that are in *bona fide* normal civil use, containing equipment controlled for export by ECCNs 1485A or 1501A, *Provided* That:

(a) Any controlled components in such aircraft or helicopters are limited to those normally installed by the manufacturer;

(b) Repair and maintenance of controlled inertial navigation systems and complete overhaul of controlled engines will be performed in a non-proscribed country or by representatives of the Western supplier; *and*

(c) Parts controlled for export will be replaced on a one-for-one basis.

2460A Military Trainer Aircraft Bearing "T" Designations and Using Reciprocating Engines or Turbo Prop Engines With Less Than 600 Horse Power (s.h.p.), and Specially Designed Component Parts Therefor (Except Reciprocating Engines)

Controls for ECCN 2460A

Unit: Report aircraft in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security, foreign policy.

Special License Available: None.

Special Foreign Policy Controls: A validated license is required for foreign policy purposes to export or reexport aircraft and helicopters, regardless of value, to Libya, Iran, Syria, and the Republic of South Africa; and to export or reexport specially designed component parts (except reciprocating engines) to Libya, Iran and Syria; and to export or reexport fixed-wing aircraft valued at $3,000,000 or more and all helicopters to the People's Democratic Republic of Yemen.

5460F Other nonmilitary aircraft and demilitarized military aircraft valued at $3,000,000 each or more and all other helicopters.

Controls for ECCN 5460F

Unit: Report in "$ value."

Validated License Required: Country Groups SZ, Syria, the People's Democratic Republic of Yemen, Iran, and the Republic of South Africa.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

NOTE: Nonmilitary aircraft designed to carry up to a maximum of 25 persons, including crew, may be exported under the Distribution License to all normally eligible countries, except Libya, Syria, the People's Democratic Republic of Yemen, and the Republic of South Africa.

Technical Data: Exports of certain technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 779.4(d)(1).

Special Foreign Policy Controls: 1. Foreign policy export controls apply to the export to the People's Democratic Republic of Yemen of aircraft valued at $3,000,000 each or more and all helicopters as defined in ECCN 5460F, except aircraft and helicopters for use by regularly scheduled airlines based in the People's Democratic Republic of Yemen for which assurances against military use have been submitted to the Office of Export Licensing.

2. A validated license is required for foreign policy purposes for the export or reexport to Libya, Iran and Syria of any aircraft (including helicopters) defined in ECCN 5460F.

6460F Other aircraft.

Controls for ECCN 6460F

Unit: Report aircraft in "number."

Validated License Required: Country Groups SZ, Iran, Syria, and the Republic of South Africa.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Technical Data: Exports of certain technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 779.4(d)(1)."

Special Foreign Policy Controls: A validated license is required for foreign policy purposes for the export or reexport to Libya, Iran and Syria of any aircraft controlled under ECCN 6460F.

Special Licenses Available: None.

List of Aircraft Controlled by ECCN 6460F

(a) Military aircraft, demilitarized (not specifically equipped or modified for military operations), *of the following description only:*

(1) Cargo, "C-45 through C-118" inclusive, and "C-121,"

(2) Trainers, bearing a "T" designation and using piston engines,

(3) Utility, bearing a "U" designation and using piston engines,

(4) Liaison, bearing an "L" designation, and

(5) Observation, bearing an "O" designation and using piston engines; and

(b) Other nonmilitary aircraft, except those defined in ECCN's 1460A, 5460F and 6460F(a).

(Specify make and model of aircraft and type of avionic equipment on aircraft. See Supp. No. 1 to § 799.2, Interpretation 20. Also see Supp. No. 2 to Part 770 or ECCNs 1460A, 2460A or 5460F for aircraft which are not covered under this ECCN.)

4461B Hughes, Model 500/530 Series helicopters (civil versions); including specially designed components.

Controls for ECCN 4461B

Unit: Report helicopters in number; components in dollar value.

Validated License Required: Country Groups: QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign Policy.

Special Licenses Available: None.

Technical Data: See 779.4(d).

Special Foreign Policy Controls: (1) This validated licensing requirement is maintained for all Country Groups to preclude diversion to S and Z destinations. (2) The licensing requirement is this ECCN 4461B expires 90 days after its effective date. (3) For commodities defined in this entry, foreign policy controls apply to Libya, Iran, the Republic of South Africa and Namibia for both aircraft and helicopters regardless of value.

5480B Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s.

Controls for ECCN 5480B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ; however, a validated license in *not* required for export to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Crime control (foreign policy).

Special Licenses Available: None.

Technical Data: Exports of related technical data require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO.

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) defined in this ECCN, except to Australia, Japan, New Zealand, and members of NATO.

ADVISORY NOTE: Applications for validated export licenses generally will be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

1485A Inertial navigation systems, inertial equipment, gyroscopes (gyros) and accelerometers, as follows, and specially designed components thereof.

NOTE: See also ECCNs 1385A and Category VIII on the U.S. Department of State Munitions List Supp. No. 2 to part 770.

NOTE: For "software", see Supp. No. 1 to Part 779.

Controls for ECCN 1485A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

NOTE: Exports of inertial navigation equipment to Country Groups QWYZ, and the People's Republic of China are controlled by the Office of Munitions Control, Department of State. See Interpretation 21.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security, foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities defined in paragraphs (f), (g), (h), and (i) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1485A.

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4(d) (5) and (20)).

The Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 799.2)

Special Foreign Policy Controls: A validated license is required for foreign policy purposes for the export or reexport to Libya, Iran and Syria of any aircraft (including helicopter) parts and accessories controlled under ECCN 1485A.

NOTE: Bulk licenses may not be used to provide aircraft parts and accessories to aircraft owned, operated, or controlled by, or under charter or lease to Libya or any of its nationals.

List of Equipment Controlled by ECCN 1485A

(a) Gyro compasses with provision for determining and transmitting ship's level reference data (roll, pitch) in addition to own ship's course data;

(b) "Integrated digital flight instrument systems" that include gyrostabilizers or automatic digital flight control systems for aircraft and "specially designed software" for the integration thereof, *except:*

(1) Flight instrument systems integrated solely for VOR, ILS, or MLS navigation and approaches; or

(2) Integrated flight instruments systems that:

(i) Have been in normal civil use for more than two years; and

(ii) Are standard equipment of "civil aircraft" and "civil helicopters";

TECHNICAL NOTE: "Integrated digital flight instrument system" is defined as a primary instrument and display system using digital data processing techniques to provide maneuver guidance information.

NOTE 1: An "integrated digital flight instrument system" is often integrated with an autopilot to the extent of embodying a common unit for setting up the required demands.

(c) Gyro-astro compasses and other devices that derive position or orientation by means of automatically tracking celestial bodies;

(d) Gyro-stabilizers used for purposes other than aircraft control, *except:*

(1) Those for stabilizing an entire surface vessel; or

(2) Those that have been in normal civil use for more than two years;

(e) Automatic pilots used for purposes other than aircraft control and "specially designed software" for the integration therefor, except marine types for surface vessels;

NOTE: This paragraph (e) does not include automatic pilots for underwater vehicles that are covered in ECCN 1417A.

(f) Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having either of the following characteristics:

(1) A threshold of 0.005 g or less; *or*

(2) A non-linearity of less than 0.25% of full scale output;

(g) Gyros with a rated free directional drift rate (rated free precession) of less than 0.5° (1 sigma or root mean square value (r.m.s)) per hour in a 1 g environment;

(h) Continuous output accelerometers that utilize "servo" or "force balance" techniques and gyros, both specified to function at acceleration levels greater than 100 g;

(i) Inertial or other equipment using accelerometers controlled by paragraph (f) or (h) above or gyros controlled by paragraphs (g) or (h) above, and systems incorporating such equipment, and "specifically designed software" for the integration thereof;

(j) Specially designed test, calibration and alignment equipment for commodities controlled by any of the above paragraphs.

(ADVISORY) NOTE FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment controlled for export under subparagraph (b), as follows: Reasonable quantities of integrated flight instrumentation systems spare parts, constituting up to a six-month supply of such parts at normal rates of consumption for aircraft previously exported to the People's Republic of China under the (Advisory) Note for the People's Republic of China to entry 1460A, provided that they are replacement parts for equipment previously installed.

6490F Off-highway wheel tractors of carriage capacity 10 tons or more; and parts and accessories, n.e.s.

Controls for ECCN 6490F

Unit: Report tractors in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

Advisory Note: Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export to Libya (Country Group S) of tractors in reasonable quantities if for civil use.

6494F Other marine engines, both inboard and outboard, n.e.s.; and specially designed parts.

Controls for ECCN 6494F

Unit: Report in "number."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* is not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

6498F Other aircraft parts and components, n.e.s.; other boats, including inflatable boats, n.e.s.; other diesel engines for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°C) n.e.s.; other underwater camera equipment, n.e.s.; other submersible systems, n.e.s.; and specially designed parts for the above equipment.

Controls for ECCN 6498F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: $0.

Processing Code: EE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

6499G Other transportation equipment, n.e.s.; and parts and accessories, n.e.s.

Controls for ECCN 6499G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: TE.

Reason for Control: Foreign policy.

Technical Data: Exports of most technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 779.4(d)(1) for exceptions to this policy.

Special Licenses Available: See Part 773.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

9499M Vehicles mounted with telecommunications equipment (including radar). (See Group 5—Electronics and Precision Instruments.) (Specify mounted equipment.) (Report telecommunications equipment, including radar, exported as replacements or accessories under appropriate Export Control Commodity Number.)

Controls for ECCN 9499M

Unit: Report in "number."

Validated License Required: Validated licenses applicable to vehicles controlled by this ECCN are those that apply to the equipment mounted on the vehicle.

GLV $ Value Limit: Limits applicable to vehicles controlled by this ECCN are those that apply to the equipment mounted on the vehicle.

Processing Code: EE.

Reason for Control: Reasons for control applicable to vehicles controlled by this ECCN are those that apply to the equipment mounted on the vehicle.

Special Licenses Available: Licenses applicable to vehicles controlled by this ECCN are those that apply to the equipment mounted on the vehicle.

Technical Data: Controls on technical data related to vehicles controlled by this ECCN are those that apply to the equipment mounted on the vehicle.

GROUP 5—ELECTRONICS AND PRECISION INSTRUMENTS

NOTE: You need a validated export license to export or reexport technical data related to electronics and precision instruments to destinations in Country Groups P, Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided*, That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 379.4 of the Regulations, *and*

(b) There are no special; foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

1501A Navigation, direction finding, radar and airborne communication equipment.

NOTE: See also ECCNs 1485A (b) and (i), 1573A and 1574A.

NOTE: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1501A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Navigation and direction finding equipment and radar equipment controlled under paragraphs (b)(2) through (b)(5) and paragraph (c) usable for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter.

Processing Code: EE.

Reason for Control: National security; foreign policy. Foreign policy controls apply to: 1. Paragraphs (a), (b)(1), and (c)(1) for Libya; and 2. nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraphs (b)(2) through (5) and (c) of the List below for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1501A.

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4(d) (3), (5), and (20)).

NOTE: Bulk licenses may not be used to provide aircraft parts and accessories defined in paragraphs (a), (b)(1) and (c)(1) of the list below to aircraft owned, operated, or controlled by, or under charter or lease to Libya or any of its nationals.

List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A

(a) Airborne communication equipment having *any* of the following characteristics, and specially designed components therefor:

(1) Designed to operate at frequencies greater than 156 MHz;

(2) Incorporating facilities for:

(i) The rapid selection of more than 200 channels per equipment; or

(ii) Equipment using frequency synthesis techniques (see also ECCN 1531), *except equipment operating in the frequency range of 108 to 137 MHz with 760 channels or fewer at not less than 25 KHz spacing, that has been in normal civil use for at least one year;*

(3) Rated for continuous operation over a range of ambient temperatures extending from below −55° C to above +55° C; or

(4) Designed for modulating methods employing any form of digital modulation using time and frequency redundancy such as "Quantized Frequency Modulation" (QFM);

NOTE: This paragraph (a) does not control airborne communication equipment that is not controlled by paragraph (a)(4) and that:

(a) Is needed to equip "civil aircraft"; or

(b) Is normal standard equipment incorporated in "civil aircraft".

TECHNICAL NOTE 1: The terms "civil aircraft" and "civil helicopter" are understood to include only those types of "civil aircraft" and "civil helicopters" that are listed by designation in published airworthiness certification lists by the civil aviation authorities to fly commercial civil internal and external routes or for legitimate civil, private or business use.

(b) Navigation and direction finding equipment, as follows, specially designed components therefor, and specialized testing, calibrating and training/simulating equipment therefor:

(1) Airborne navigation equipment and direction finding equipment, as follows:

(i) Designed to make use of Doppler frequency phenomena, *except* navigation equipment to be installed in "civil aircraft" and "civil helicopters", and which is normal standard equipment of a type installed in "civil aircraft" and "civil helicopters" in a Western country.

NOTE: Technical data for navigation equipment using Doppler frequency phenomena remains controlled for export.

(ii) Utilizing the constant velocity or the rectilinear propagation characteristics of electromagnetic waves having a frequency less than 4×10^{14} Hz (0.75 micrometer);

(iii) Radio altimeters, the following:

(*a*) Pulse modulated;

(*b*) Frequency modulated having a displayed electrical output accuracy better than ±0.914 m (±3 feet) over the range between 0 and 30.4 m (100 feet) or better than ±3% above 30.4 m (100 feet), *except* standard commercial airborne equipment needed to equip "civil aircraft" or "civil helicopters" or as normal standard equipment incorporated in "civil aircraft" or "civil helicopters" being exported for civil commercial use, provided such equipment is equivalent in all characteristics and performance to standard equipment of aircraft not subject to control for export, and which are frequency-modulated radio altimeters which have been in normal civil use for a period of more than one year.

NOTE: Technical data for these radio altimeters remains controlled for export.

(*c*) Frequency modulated which have been in normal civil use for less than one year.

TECHNICAL NOTE: The accuracy is related to that provided by the electrical output circuits of the altimeter at any altitude. The word accuracy also refers to the equipment's accuracy over time. This accuracy over time is defined for the instrument itself without reference either to a calibrated value or to a designated electrical value.

(iv) Direction finding equipment operating at frequencies greater than 5MHz;

(v) Rated for continuous operation over a range of ambient temperatures extending from below −55° C to above +55° C;

NOTES: 1. Paragraph (b)(1)(ii) does not control Loran-C equipment having all of the following characteristics:

(a) It has been in normal civil use for a period of more than one year;

(b) It is standard commercial equipment that is:

(1) Needed to equip "civil aircraft"; *or*

(2) Incorporated in "civil aircraft";

(c) It is equivalent in all characteristics and performances to standard equipment of aircraft not subject to control;

(d) It is in conformity with ICAO standards;

(e) It is not designed to make use of hyperbolic grids at frequencies higher than 3 MHz;

(f) It does not contain electronic equipment that:

(1) Can compute the position of the aircraft in one coordinate system when furnished position information in another coordinate system (*i.e.*, "coordinate conversion equipment");

(2) Could not be shipped under the provisions of ECCN 1565A; and

(3) Has been in normal civil use for a period of less than one year.

2. Direction finding equipment specially designed for search and rescue purposes and operating at a frequency of 121.5 Mhz or 243 MHz is not covered by this sub-paragraph (b). This exclusion also applies to personal locator beacons operating in this form that may also have an additional channel selectable for voice mode only.

(2) Ground and marine equipment for use with airborne navigation equipment utilizing the constant velocity or the rectilinear propagation characteristics of electromagnetic waves having frequency less than 4x10^{14} Hz (wavelength 0.75 micrometer);

(3) Ground and marine direction finding equipment operating at frequencies greater than 30 MHz; and

NOTE: Paragraph (b)(3) of this ECCN does not control equipment, other than single side band equipment, operating at frequencies up to 157 MHz and employing a loop system or a system employing a number of spaced vertical aerials uniformly disposed around the circumference of a circle, excluding electronically commutated types.

(4) Timing receivers whose only function is automatically providing time derived from satellite signals to within 1 millisecond of Universal Coordinate Time (UCT) or better;

(5) Ground or marine navigation and geodetic positioning systems designed for use with satellite-provided timing, positioning or navigation information;

TECHNICAL NOTE 2: By "coordinate conversion equipment" is meant electronic equipment designed to compute the position of the aircraft in one coordinate system when furnished position information in another coordinate system.

(c) Radar equipment, as follows, and specially designed components, specialized testing, calibrating and training/simulating equipment: (For Lidar equipment, see ECCN 1522A.)

(1) Airborne radar equipment; or

NOTE: This ECCN 1501A does not control airborne civil weather radar conforming to international standards for civil weather radars provided they do not include any of the following:

(a) Phased array antennas;

(b) "Frequency agility";

(c) "Spread spectrum"; or

(d) Any signal processing specially designed for tracking of vehicles.

(2) Ground and marine radar equipment having one or more of the following features:

(i) Operating at a frequency not in normal civil use or at a frequency or more than 10.5 GHz;

(ii) Operating at a frequency of less than 1.5 GHz and having a peak output power from the transmitter greater than 2.5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power from the transmitter greater than 1.5 MW; or operating at a frequency within the range of 3.5 to 6 GHz and having a peak output power from the transmitter greater than 1 MW; or operating at a frequency within the range of 6 to 10.5 GHz and having a peak output power from the transmitter greater than 500 kW;

(iii) Operating at a frequency of less than 3.5 GHz and having an 80 percent or better probability of detection for a 10 sq. meter target at a free space range of 250 nautical miles; or operating at a frequency within the range of 3.5 to 10.5 GHz and having an 80 percent or better probability of detection for a 10 sq. meter target at a free space range of 100 nautical miles:

Technical Note: Probability of detection is determined on the principle on which it is based, according to the following parameters:

(a) Radial closing velocity of the target: 2,000 feet per second (610 meters per second);

(b) Probability of false alarm: 10^{-6}.

(c) Operator factor: 3 dB; and

(d) Fluctuation of the target in accordance with Rayleigh distribution.

(iv) Utilizing other than pulse modulation with a constant and/or staggered pulse repetition frequency, in which the carrier frequency of the transmitter signal is not changed deliberately between groups of pulses, from pulse to pulse or within a single pulse, *except civil commercial airport radars using a carrier frequency that may change from pulse to pulse between two fixed frequencies separated in time and in frequency by constant magnitudes;*

(v) Utilizing a Doppler technique for any purpose, other than M.T.I. systems using a conventional double or triple pulse delay line cancellation technique, *except those utilized for surveillance and control radars for aerial navigation in civil airports;*

(vi) Including any digital signal processing techniques used for automatic target tracking, or having a facility for electronic tracking;

(vii) Including signal processing techniques other than those covered by paragraph (c)(2)(vi) above, that have been in normal civil use for a period of less than two years; or

(viii) In the case of ground radar, having been in commercial use for a period of less than one year.

Note 1: This ECCN does not control the following:

(a) Standard commercial airborne equipment listed in subparagraph (b)(1)(ii) above needed to equip civil aircraft or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, provided such equipment is in conformity with ICAO standards and assures no function exceeding those resulting from such standards, is not designed to use satellite-broadcasted navigation signals and is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz. (Standard commercial airborne equipment designed to make use of hyperbolic grids at frequencies of less than 3 MHz may be exported if coordinate conversion equipment, that has been in normal civil use for less than one year or could not be shipped under the provisions of ECCN 1565, is not included and is not separately supplied.) Normal civil equipment released by this paragraph consists of: marker beacons, ILS, VOR ("OMNI"), Omega, Loran A and B.

(b) Ground and marine equipment listed in sub-paragraph (b)(2) above, for use with airborne navigation equipment using the constant velocity or rectilinear propagation characteristics of electromagnetic waves having a frequency less than 4×10^{14} Hz (wavelength 0.75 micrometer), provided the ground equipment is for use at civil airports or for civil use in association with civil airborne equipment, and:

(1) Is in conformity with ICAO standards and assures no function exceeding those resulting from such standards;

(2) Is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz;

(c) Equipment listed in sub-paragraph (b)(5) of this ECCN restricted to use with TRANSIT satellite systems or other uncontrolled systems that is not also controlled by sub-paragraph (b)(4) of this ECCN;

(d) Secondary radar equipment controlled by sub-paragraph (c) of this ECCN specially designed for civil air traffic identification and control purposes;

(e) Equipment assemblies for civil marine automatic radar plotting aids or electronic relative motion analyzers designed to achieve the requirements published by the International Maritime Organization in accordance with the Safety of Life at Sea (SOLAS) conventions, provided the designed tracking speeds do not exceed relative values of greater than 150 knots (77.1 meters/second);

(f) Ground radar of the hand-held or automobile-mounted type used for vehicle speed monitoring by police authorities and operating in the frequency band from 10.5 to 10.55 GHz.

(g) Global positioning satellite receivers listed in paragraphs (b) (4) and (5) of this ECCN 1501A that have all of the following characteristics:

(1) Capable only of processing the L1 channel (also called the Standard positioning Service (SPS) channel);

(2) Capable of only the Short-Term Code (Coarse Acquisition Code (C/A code)) with short term generation cycle;

(3) No decryption capabilities;

(4) Including no cesium beam standards; *and*

(5) Including no null steerable antenna.

Note 2: Specialized testing or calibrating equipment shipped pursuant to the various exception clauses in the ECCN shall be limited to equipment:

(a) Shipped with operational equipment for which exception clause is intended: *or*

(b) Specifically for such operational equipment that has previously been exported.

(Advisory) Note: (GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to Part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following:

(a) Radar equipment controlled for export only by paragraphs (c)(2) (i), (ii), or (iii) of this ECCN, provided that both of the following conditions are met:

(1) It is specially designed for the surveillance and coordination of airfield surface traffic; *and*

(2) It is to be installed at airports operating scheduled commercial flights;

(b) Radar equipment controlled for export only by paragraphs (c)(2) (ii) or (iii) of this ECCN, or both, provided that all the following conditions are met:

(1) It operates at a frequency of not more than 1.5 GHz and has a peak output power from the transmitter not greater than 5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power not greater than 2.5 MW;

(2) It has an 80% or better probability of detection for a 10 sq. meter target at a free space range of 270 nautical miles;

(3) It has a pulse repetition frequency exceeding 300 pulses per second;

(4) It is to be installed for air traffic control of scheduled international commercial flights;

(c) Radar equipment controlled for export only by paragraph (c)(2) (iv) or (v) of this ECCN, provided that it is to be installed for air traffic control purposes in international airports and has been in normal civil use for a period of not less than three years;

(d) Radar equipment controlled for export by paragraph (c)(2)(vi) of this ECCN, provided that it is specially designed for marine, harbor or meteorological use, or has been in normal civil use for not less than three years;

(e) Radar equipment controlled for export only by paragraphs (c)(2)(vii) of this ECCN, provided that it is specially designed for marine (or harbor) use, or radar equipment controlled for export only by paragraph (c)(2) (vii) or (viii) of this ECCN, or both, provided that it is specially designed for meteorological observation.

Technical Note: By "coordinate conversion equipment" is meant electronic equipment designed to compute the position of the aircraft in one coordinate system when furnished position information in another coordinate system.

(b) For equipment covered by sub-item (b)(1)(iii) of this ECCN, are frequency-modulated radio altimeters that have been in normal civil use for a period of more than one year.

1502A Communication, detection or tracking equipment of a kind using ultraviolet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

Note: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1502A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License required: Country groups QSTVWYZ.

GLV $ Value Limit: For police-model infrared viewers, the $ value limit is $1,000 only to Australia, Japan, New Zealand and members of NATO, and $0 to all other destinations. For items other than police-model infrared viewers, the $ value limit is $1,000 to Country Groups T & V, except $0 to the People's Republic of China; $0 to all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation; crime control (foreign policy). Foreign policy controls apply only to police-model infrared viewers.

Special Foreign Policy Controls: An individual validated license is required for foreign policy purposes to export police-model infrared viewers controlled by this ECCN to any destination except Australia, Japan, New Zealand, and members of NATO.

Technical Data: Exports of technical data related to police-model infrared viewers require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO.

Special Licenses Available: A Distribution License is available for shipment of police model infrared viewers to countries listed in Supp. No. 2 to Part 773. Other special licenses, as well as a Distribution License, may be available for other equipment in the LIST below; see Part 773.

List of Equipment Controlled by ECCN 1502A

NOTES: 1. This ECCN 1502A controls infrared or ultraviolet sensing devices, not otherwise controlled for export by Supp. No. 2 to Part 770 of the Export Administration Regulations, containing image intensifiers controlled for export by ECCN 1555A on the Commodity Control List.

NOTE 2: This ECCN 1502A does not control:

(a) Industrial equipment employing cells not controlled by ECCN 1548A;

(b) Industrial and civilian intrusion alarm, traffic and industrial movement control and counting system;

(c) Medical equipment;

(d) Industrial equipment used for inspection, sorting or analysis of the properties of materials;

(e) "Simple education devices" that employ photocells;

(f) Simple devices for entertainment or for home use that employ photocells;

(g) Flame detectors for industrial furnaces;

(h) Equipment for non-contact temperature measurement for laboratory or industrial purposes using a single detector cell with no scanning of the detector;

(i) Instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds;

(j) Equipment designed for measuring radiated power or energy for laboratory, agricultural or industrial purposes using a single detector cell with no scanning of the detector and single detector cell assemblies or probes specially designed therefor, having a response time constant exceeding 1 miscrosecond;

(k) Infrared geodetic equipment, provided that equipment uses a lighting source other than a laser and is manually operated, or uses a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment;

(l) Infrared communication equipment with characteristics not exceeding those in ECCN 1519A.

NOTE 3: This ECCN 1502A does not control ultrasonic devices;

(a) Operating in contact with a controlled material to be inspected;

(b) Used for industrial cleaning, sorting or materials handling;

(c) Used for emulsification;

(d) Used for homogenization;

(e) Used in "simple educational devices";

(f) Used in simple entertainment devices.

NOTE 4: This ECCN 1502A does not control underwater ultrasonic communication systems that do not have any of the following:

(a) Electronic beam steering;

(b) Encryption techniques; *or*

(c) A carrier frequency outside the range from 20 to 60 kHz.

NOTE 5: This ECCN 1502A does not control:

(a) Infrared thermal imaging equipment having all the following characteristics:

(1) The detector is a single element;

(2) The detector is neither a charge coupled device (CCD) nor an integrate-while-scan device;

(3) The detector is either:

(i) Not cooled; *or*

(ii) Cooled by using a liquid nitrogen Dewar vessel; *and*

(4) The equipment is:

(i) Non-ruggedized, medical equipment; *or*

(ii) Has both of the following:

(A) A resolution not exceeding 22,500 resolvable elements; *and*

(B) A Noise Equivalent Temperature Difference (NETD), (or temperature sensitivity) of no less than 273.25K (0.1°C);

NOTE: This paragraph (a) does not release Joule-Thompson coolers, cooling engines or thermoelectric coolers.

(b) Infrared viewing equipment having all the following characteristics;

(1) The detector is a pyroelectric vidicon without reticle;

(2) The equipment is designed for fire fighting and buried body detection; *and*

(3) The optimal sensitivity is in the wavelength range from 8 to 14 micrometers.

NOTE: Nothing in paragraphs (a) and (b) releases any technical data from export control.

TECHNICAL NOTE: The term "simple educational devices" is defined as devices designed for use in teaching basis scientific principles and demonstrating the operation of those principles in educational institutions.

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electromagnet geophones), *except those systems or equipment listed below.*

NOTE: For "specially designed software". See Supp. No. 3 to Part 779.

Controls for ECCN 1510A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the

People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: TE.

Reason for Control: National security.

Special South Africa Controls: A validated license is required for export to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

Special Licenses Available: See Part 773.

List of Systems and Equipment Controlled by ECCN 1510A

(a) Marine systems or equipment:

(1) Active (transmitting or transmitting and receiving) systems or equipment, as follows:

(i) Wide swath bathymetric survey systems capable of the following:

(A) Measuring depths of more than 300 m below the water surface; *and*

(B) Taking measurements at an angle exceeding 10° (0.175 rad) from the vertical;

(ii) Object detection or location systems having any of the following characteristics:

(A) Transmitting frequency below 15 kHz;

(B) Sound pressure level exceeding 224 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency at or above 15 kHz and at or below 24 kHz;

(C) Sound pressure level exceeding 235 db (reference 1 micropascal at 1 m) for equipment with an operating frequency exceeding 24 kHz, but not exceeding 30 kHz;

(D) Transmission bandwidth exceeding ±10% of the design center frequency;

(E) Designed to withstand pressure during normal operation at depths exceeding 1,000 m; *or*

(F) Capable of measuring distances over 5,000 m;

NOTE: Paragraph (a)(1)(ii) of this ECCN does not control depth sounders, operating vertically below the apparatus, that do not include a scanning function used solely for measuring the depth of water or the distance of submerged or buried objects or for fish-finding.

(iii) Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, other than specially designed components for equipment described elsewhere in this ECCN 1510A, and having any of the following characteristics:

(A) An instantaneous radiated acoustic power density exceeding 10 W per m^2 per Hz for devices operating at frequencies below 100 kHz;

(B) A continuously radiated acoustic power density exceeding 10 W per m^2 per Hz for devices operating at frequencies below 100 kHz;

(C) Designed to withstand pressure during normal operation at depths exceeding 1,000 m;

(D) Projecting sound with a beamwidth less than 3° (0.0524 rad) for devices operating at frequencies below 100 kHz; *or*

(E) With side-lobe suppression exceeding 22 dB;

TECHNICAL NOTE: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

NOTE: Paragraph (a)(1)(iii) of this ECCN does not control electronic noise sources for vertical use only, or mechanical, e.g., air gun or vapor-shock gun or chemical, e.g., explosive, noise sources.

(iv) Acoustic systems or equipment for determining the position of surface or underwater vehicles, having any of the following characteristics:

(A) Capable of processing responses from more than eight beacons in the calculation of a point;

(B) Using coherent "signal processing" between two or more beacons and the hydrophone unit carried by surface or underwater vehicle;

(C) Having devices for automatically correcting speed-of-sound propagation errors for calculation of a point;

(D) Capable of operating at a range of more than 1,000 m with a positional accuracy of better (less) than 20 m when measured at a range of 1,000 m;

(E) Having transducers, acoustic modules or hydrophones designed to withstand pressure at depths exceeding 1,000 m; *or*

(F) Having beacons with either of the following characteristics:

(*1*) Designed to operate normally at depths exceeding 1,000 m; *or*

(*2*) Synchronized with each other using sing-around or other self-calibrating techniques;

(2) Passive (receiving, whether or not related in normal application to separate active equipment) systems or equipment, as follows:

(i) Hydrophones or transducers having either:

(A) Continuous flexible sensors or assemblies of discrete sensors with dimensions less than 20 mm that approximate a continuous flexible sensor, *or*

(B) Sensors made of materials other than magnetostrictive nickel-iron alloys or rigid piezoelectric ceramics or crystals;

(ii) Hydrophones or transducers incorporating sensors made of rigid piezoelectric ceramics or crystals and having any of the following characteristics:

(A) A sensitivity better than −180 dB at any depth with no acceleration compensation;

(B) A sensitivity better than −192 dB with acceleration compensation;

(C) A sensitivity better than −204 dB when designed for normal operation at depths exceeding 100 m; *or*

(D) Designed for operation at depths exceeding 1,000 m;

TECHNICAL NOTE: The sensitivity of a hydrophone is defined as 20 times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field having an rms pressure of 1 micropascal. For example, a hydrophone of −160 dB sensitivity (reference 1 V per micropascal) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output.

(iii) Towed acoustic hydrophone arrays having any of the following:

(A) Operating at depths exceeding 100 m;

(B) Operating at tow speeds in excess of 8 knots (14.8 km/hour);

(C) Using heading sensors:

(*1*) Incorporated within the array hosing;

(*2*) Accuracy better than ± 0.5° (0.0087 rad); *or*

(*3*) Capable of operating or of being modified to operate at depths exceeding 100 m;

(D) Hydrophone groups uniformly spaced at less than 25 m;

(E) An assembled array diameter of less than 40 mm;

(F) Using other than metallic strength members;

(G) Multiplexed hydrophone group signals;

(H) A configuration for multiple or overlapping acoustic aperture operation;

(I) Hydrophone characteristics specified in paragraphs (a)(2)(i) or (a)(2)(ii); *or*

(J) Longitudinally reinforced array-hoses;

(iv) Processing equipment specially designed for acoustic hydrophone or geophone arrays, having any of the following:

(A) Electronically-steerable beamforming capabilities;

(B) Side-lobe suppression techniques;

(C) Real-time at-sea capability to integrate seismic acoustic data received from two or more arrays;

(D) Cancellation of array flow or acceleration noise;

(E) No "user-accessible programmability" for:

(*1*) Fast Fourier Transform of 1,024 complex points in less than 40 ms; *or*

(*2*) An "equivalent multiple rate" exceeding 800,000 operations per second; *or*

(F) "User-accessible programmability" for:

(*1*) Time domain processing and correlation; *or*

(*2*) Frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

(b) Terrestrial systems or equipment having either of the following characteristics:

(1) Capable of conversion by the user to underwater or marine applications controlled by this ECCN 1510A; *or*

(2) Employing geophones or other transducers controlled by this ECCN 1510A.

(ADVISORY) NOTE FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Acoustic systems or equipment for determining the position of the surface of underwater vehicles, provided that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a point;

(2) They do not have devices for correcting automatically speed-of-sound propagation errors for calculation of a point;

(3) They do not use coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface or underwater vehicle; *and*

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressures at depths exceeding 1,000 m;

(b) Side-scan sub-bottom profile systems no portion of which is specially designed for operation at depths exceeding 1,000 m.

1516A Receivers, and specially designed components and accessories therefor.

NOTE: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1516A

Unit: Report receivers in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 to Australia, Japan, New Zealand, and members of NATO; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Radio receivers, for telemetering and telecontrol equipment, controlled by paragraph (b) and usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter and launch and ground support of these systems.

Processing Code: EE.

Reason for Control: National security; foreign policy including crime control and nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraph (b) under the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2. launch and ground support of the above systems.

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) to any destination except Australia, Japan, New Zealand, and members of NATO.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A

(a) Digitally controlled radio receivers, whether or not computer controlled, that search or scan automatically a part of the electromagnetic spectrum, in which the switching operation takes less than 4.5 ms, and that indicate or identify the received signals, *except* non-ruggedized, pre-set type radio receivers designed for use in civil communications that have 1,000 selective channels or fewer;

(b) Receivers for "spread spectrum" and "frequency agile" systems having a total transmitted bandwidth that is:

(1) 100 or more times greater than the bandwith of any one information channel; *and*

(2) In excess of 50 kHz;

(c) Receivers that incorporate digital signal processing, *except* receivers specially designed for internationally allocated civil frequency bands only and that do not permit "user-accessible programmability" of the digital signal processing circuits.

NOTE: (1) For radio frequency spectrum analyzers, see ECCN 1533A;

(2) For field strength meters, see ECCN 1529A; and

(3) For radio relay communications equipment, see ECCN 1520A.

TECHNICAL NOTE 1: "Spread spectrum" is defined as the technique whereby energy in a relatively narrow-band communications channel is spread over a much wider energy spectrum under the control of a random or pseudo-random bit stream. On receipt, the signal is correlated with the same bit stream to achieve the reverse process of reducing the bandwidth to its original form. By allocating different bit streams to different subscribers transmitting simultaneously, significantly greater use can be made of available bandwidth.

TECHNICAL NOTE 2: "Frequency agility" (or frequency hopping) is another form of spread spectrum in which the transmission frequency of a single communications channel is made to change by discrete steps under the control of a similar bit stream.

1517A Radio transmitters, except radio relay communications equipment (for which see ECCN 1520A), and specially designed components therefor.

Controls for ECCN 1517A

Units: Report equipment and transmitters in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Radio transmitters, for telemetering and telecontrol equipment, controlled by paragraph (c) and usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter and launch and ground support of these systems.

Processing Code: EE.

Reason for Control: National security; foreign policy. Foreign policy controls only apply to commodities described in paragraph (c) of the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 776.18(a); and 2 launch and ground support of the above systems.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1517A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Radio Transmitters and Components Controlled by ECCN 1517A

(a) Transmitters or transmitter-amplifiers designed to operate at output frequencies greater than 960 MHz;

(b) Transmitters or transmitter-amplifiers designed to provide any of the following features:

(1) Any system of pulse modulation (that does not include amplitude-, frequency- or phase-modulated television or telegraphic transmitters or pulse-width modulated sound broadcasting transmitters);

(2) Rated for operation over a range of ambient temperatures extending from below −40 °C to above +60 °C;

(c) Transmitters for spread spectrum and frequency agile systems having a total transmitted bandwidth that is (For the definition of "spread spectrum" and "frequency agility", see Technical Notes 1 and 2 to ECCN 1516A.):

(1) 100 or more times greater than the bandwidth of any one information channel; and

(2) In excess of 50 kHz.

(For quartz crystals, see ECCN 1587A; for radio transmitters incorporating transmitter drive units, exciters, and master oscillators using frequency synthesis, see also ECCN 1531A.)

NOTE: This ECCN does not control the following transmitters or transmitter-amplifiers, or systems containing such equipment, accessories and sub-assemblies therefor:

(a) Specially designed for medical applications and operating at I.S.M. frequencies;

(b) Having an output power of not more than 10 W, specially designed for:

(1) Industrial or civil intrusion detection and alarm;

(2) Industrial and traffic detection, counting, speed measurement, identification and movement control;

(3) Carrying the information from the equipment above, or the information of environmental, air or water, pollution detection or measurement systems.

(c) Transmitters using wideband amplifiers designed for non-frequency agile civil applications, such as television and mobile service.

17B Communications intercepting devices; and parts and accessories therefor. (Specify by name.) (Also see §776.13.)

Controls for ECCN 4517B

it: Report in "$ value."

lidated License Required: Country roups QSTVWYZ and Canada.

LV $ Value Limit: $0 for all destinations.

ocessing Code: EE.

ason for Control: Controls on this uipment are maintained in accordance with the Omnibus Crime Control nd Safe Streets Act of 1968 (Pub. L. -351).

ecial Licenses Available: None.

18B Telemetering and telecontrol equipment suitable for use with aircraft (piloted or pilotless) or space vehicles, and test equipment specially designed for such equipment, except equipment specially designed to be used for remote control of toys such as model planes and boats and having electric field strength of not more than 200 microvolts per meter at a distance of 500 meters; and specially designed parts and accessories therefor. (Specify by name and model number.)

Controls for ECCN 4518B

nit: Report equipment and transmitters in "number"; parts and accessories in "$ value."

lidated License required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General Licenses GCT or GDR: Entire entry.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply for nuclear weapons delivery non-proliferation purposes. Nuclear weapons delivery non-proliferation controls apply to: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kg payload to a range of at least 300 km; and 2. launch and ground support of the above missiles.

Special Licenses Available: None available.

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4(d) (3), (5), and (20)).

1519A "Telecommunication transmission equipment", measuring and test equipment, as follows, and specially designed components and accessories therefor.

NOTE: By "telemetering, telecommand and telesignalling equipment" is meant: sensing heads for the conversion of information into electrical information, the systems used for its long-distance transmission, the processes used to translate electrical information into coded data (telemetering), into control signals (telecommand), and into display signals (telesignalling).

NOTE: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1519A

Unit: Report equipment and transmitters in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: None available for commodities controlled under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1519A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1519A

NOTE: The status of "telecommunications transmission equipment" using lasers is defined by this ECCN 1519A.

(a) "Telecommunication transmission equipment" employing digital techniques (including the digital processing of analog signals) and having at least one of the following characteristics:

(1) Designed for a total digital transfer rate that, at the highest multiplex level, exceeds:

(i) 45 million bit/s; or

(ii) 8.5 million bit/s for stored program controlled digital crossconnection equipment;

NOTE: The maximum of 45 million bit/s for the highest multiplex level does not preclude total digital transfer rates of maximally 90 million bit/s to allow for line coding and overhead for:

(a) Line terminating equipment;
(b) Intermediate amplifier equipment;
(c) Repeater equipment;
(d) Regenerator equipment;
(e) Translation encoders (transcoders);

(2) Designed for a "date signalling rate" that exceeds:

(A) Employing an automatic error detection and correction system; *and*

(B) Retransmission is not required for correction;

(i) 9,600 bit/s when using the "bandwidth of one voice channel"; *or*

(ii) 64,000 bit/s when using baseband;

(3) Employing a laser having a transmission wavelength exceeding 1,000 nm;

NOTE: For statistical multiplexers that satisfy the definitions of either "data (message) switching" or "stored program controlled circuit switching," and for the definitions of these terms, see ECCN 1567A.

(b) "Telecommunication transmission equipment" employing lasers and having any of the following characteristics:

(1) Employing analog techniques and having a bandwidth that exceeds 45 MHz or having an operating wavelength longer than 1,370 nm;

(2) Employing optical heterodyne or homodyne detection techniques (also called coherent optical transmission techniques); or

(3) Employing wavelength division multiplexing techniques.

(c) Electronic measuring or te
equipment, including bit error ra
test sets, specially designed for th
equipment controlled for export b
paragraph (a)(1) above.

NOTE: When determining the "data sign
ling rate," servicing and administrati
channels shall be excluded.

"Telecommunication transmission equip
ment"—

For the purpose of this ECCN, telecom
munication transmission equipment is:

(a) Categorized as the following equip
ment, or as combinations of the followi
equipment:

(1) Line terminating equipment;

(2) Intermediate amplifier equipment;

(3) Repeater equipment;

(4) Regenerator equipment;

(5) Translation encoders (transcoders);

(6) Multiplex equipment;

(7) Modulators/demodulators (modems);

(8) Transmultiplex equipment (see CCIT
Rec. G701); *or*

(9) "Stored program controlled digi
crossconnection equipment; *and*

(b) Designed for use in single or mult
channel communication via:

(1) Wire (line);

(2) Coaxial cable;

(3) Optical fiber cable; *or*

(4) Radio.

NOTES: 1. Nothing in this ECCN 1519A a
thorizes the export of technical data for th
development or production of equipmen
employing digital transmission techniqu
for operation at a total digital transfer ra
at the highest multiplex level exceeding 1
million bit/s.

2. This ECCN 1519A does not control:

(a) Telemetering, telecommand and te
signalling equipment designed for industri
purposes, together with data transmissio
equipment not intended for the transmis-
sion of written or printed text;

NOTE: Telemetering, telecommand and te-
lesignalling equipment consists of:

(a) Sensing heads for the conversion of i
formation into electrical signals;

(b) The systems used for the long-distan
transmission of these electrical signals; an

(c) The process used to translate electrica
signals into coded data (telemetering), int
control signals (telecommand) and into d
play signals (telesignalling).

(b) Facsimile equipment that is not co
trolled for export by ECCN 1527A; *or*

(c) Equipment employing exclusively th
direct current transmission technique.

(ADVISORY) NOTE 3: Licenses are likely t
be approved for export to satisfactory en
users in Country Groups Q, W, and Y o
equipment controlled by paragraph (a)(3) o

ECCN 1519A when the wavelength does exceed 1,370 nm.

(Advisory) Note 4 for the People's Re- lic of China: Licenses are likely to be ap- ved for export to satisfactory end-users the People's Republic of China of the fol- ing communication, measuring or test ipment:

(a) "Telecommunication transmission ipment" provided it is:

(1) Intended for general commercial traf- in a civil communication system;

(2) Designed for operation at a total digi- transfer rate at the highest multiplex l of 140 million bit/s or less;

(3) Installed under the supervision of the ler in a permanent circuit; *and*

(4) To be operated by the civilian authori- s of the importing country;

(b) Measuring and/or test equipment nec- ry for the use (i.e., installation, oper- on and maintenance) of equipment ex- rted under the conditions of this Note, vided:

(1) It is designed for use with communica- n transmission equipment operating at a ta signalling rate" of 140 million bit/s or s; *and*

(2) It will be supplied in the minimum ntity required for the transmission ipment eligible for Advisory Note treat- nt;

Note: Where possible, built-in test equip- nt (BITE) will be provided for installa- n or maintenance of transmission equip- nt eligible for export under this Advisory te to this ECCN rather than individual t equipment;

Notes: 1. For communication equipment ng optical fiber as the communication dium, the transmission wavelength must t exceed 1,370 nm.

2. [Reserved]

(Advisory) Note 5 for the People's Re- lic of China: Licenses are likely to be proved for export to satisfactory end- s in the People's Republic of China of dems and multiplexers controlled for port by paragraph (a)(2)(i) of the "List of uipment Controlled by ECCN 1519A" de- ned for operation at "data signalling tes" of 19,200 bit/s or less.

(Advisory) Note 6: Licenses are likely to approved for export to satisfactory end- ers in Czechoslovakia, Hungary, and land of the following communication, asuring or test equipment for:

(a) "Telecommunication transmission uipment" provided that it is:

(1) Intended for general commercial traf- c in a civil communication system;

(2) Designed for operation at a total digi- al transfer rate at the highest level multi- ex level of 156 million bit/s or less;

(3) Installed under the supervision of the ller in a permanent circuit; and

(4) To be operated by the civilian authorities of the importing country;

(b) Measuring or test equipment necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Note, provided that:

(1) It is designed for use with communication transmission equipment operating at a total digital transfer rate of 156 million bit/s or less; and

(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under an Advisory Note.

Note: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this ECCN 1519A rather than individual test equipment.

Notes:

1. The maximum of 156 million bit/s does not preclude total digital transfer rates of maximally 187.2 million bit/s to allow for line coding and overhead for:

(a) Line terminating equipment;

(b) Intermediate amplifier equipment;

(c) Repeater equipment;

(d) Regenerator equipment; or

(e) Translation encoders (transcoders).

2. If the equipment employs a laser the transmission wavelength must not exceed, 1,370 nm.

3. A license application to export any commodities covered by (Advisory) Note 6 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

(Advisory) Note 7: Licenses are likely to be approved for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of modems controlled by sub-paragraph (a)(2) of this ECCN 1519A. A license application to export any commodities covered by this Note shall include an end-use statement from the importing government providing the government's assurance that the export is intended solely for the stated end-use.

(Advisory) Note 8: Licenses will receive favorable consideration for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of technical data controlled by this ECCN 1519A and of instrumentation, test equipment and components and "specially designed software" therefor, and materials and components controlled by this ECCN 1519A or other "A" level entries on the Commodity Control List, for modification or production of "telecommunication transmission equipment" or systems, provided that:

Note: Technical data for general purpose computers is not eligible for consideration under (Advisory) Note 8 of this ECCN 1519A; i.e., it is covered under ECCN 1565A(j).

(a) The characteristics of the "telecommunications transmission equipment" or systems are limited to those that make them free from control or eligible for consideration under (Advisory) Note 6 or (Advisory) Note 7;

(b) Modification of the "telecommunications transmission equipment" or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of (Advisory) Note 6 or (Advisory) Note 7;

(c) Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

Note: Paragraph (c) of (Advisory) Note 8 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilize the transferred technical data, instrumentation and test equipment;

(e) All "software" shall be exported in machine executable form only;

(f) Development technical data is not included;

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another controlled destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the "telecommunications transmission equipment" or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recover source code or upgrade the system beyond the performance threshold or features of (Advisory) Note 6 or (Advisory) Note 7 as applicable;

(i) End-use reporting of the installed "telecommunication transmission equipment" or systems will be provided as per (Advisory) Note 6 or (Advisory) Note 7;

(j) Reserved;

Notes:

1. No export under (Advisory) Note 8 shall establish a precedent for export approvals under other "A" level entries in the Commodity Control List.

2. A license application to export any commodities covered by (Advisory) Note 8 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; and

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

DEFINITIONS OF TERMS:

Bandwidth of one voice channel—

In the case of data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151;

Data signalling rate—

As defined in ITU Recommendation 53-36, taking into account that, for nonbinary modulation, "baud" and "bit per second" are not equal. Bits for coding, checking and synchronization functions are to be included.

Note: When determining the "data signalling rate," servicing and administrative channels shall be excluded.

Telecommunication transmission equipment—

(a) Categorized as follows, or combinations thereof:

(1) Line terminating equipment;

(2) Intermediate amplifier equipment;

(3) Repeater equipment;

(4) Regenerator equipment;

(5) Translation encoders (transcoders);

(6) Multiplex equipment;

(7) Modulators/demodulators (modems);

(8) Transmultiplex equipment (see CCITT Rec. G701); *or*

(9) Stored program controlled digital crossconnection equipment; *and*

(b) Designed for use in single or multichannel communication via:

(1) Wire (line);

(2) Coaxial cable;

(3) Optical fiber cable; *or*

(4) Electromagnetic radiation.

1520A Radio relay communication equipment, specially designed test equipment and software, and specially designed components and accessories therefor.

Controls for ECCN 1520A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

Technical Data and Software: GTDR with written assurance applies to specially designed software and to technical data for development or production of equipment controlled by this ECCN 1520A, as well as technical data described in Notes 1 and 2 following paragraph (a), for export to Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1520A

NOTE: Associated multiplex equipment is considered separately under the provisions of ECCN 1519A.

(a) Radio relay communication equipment designed for use at frequencies exceeding 960 MHz, *except* when having any of the following sets of characteristics:

(1) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 23.6 GHz, employing analog transmission;

(2) Microwave radio links:

(i) Employing digital transmission techniques;

(ii) Designed for operation at a total digital transfer rate not exceeding 45 Mbit/s;

(iii) Not employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the total digital transfer rate exceeds 8.5 million bit/s; *and*

(iv) Operating at fixed frequencies not exceeding 23.6 GHz.

NOTE: The maximum of 45 million bit/s does not preclude total digital transfer rates of maximally 90 million bit/s to allow for line coding and overhead.

(3) Ground communication radio equipment designed for civil use with temporarily fixed services and designed to be used at fixed frequencies not exceeding 23.6 GHz with a power output of not more than 5 W;

(4) They are:

(i) Civil sound or television broadcast receiving stations designed to comply with ITU standards, as described in CCITT or CCIR documents, for satellite reception;

(ii) Specially designed for use at fixed frequencies allocated by the International Telecommunications Union (ITU) for civil television or sound radio satellite broadcasting; *and*

(iii) Operating at frequencies not exceeding 31 GHz;

(5) The equipment is:

(i) Specially designed for the transmission of television signals; *and*

(ii) Operating at frequencies not exceeding 23.6 GHz;

(6) The equipment is:

(i) Specially designed to be installed and operated in:

(A) Communication and direct broadcast satellite earth stations for civil communication and direct broadcast;

(B) Telemetry-tracking-and-command earth stations for civil satellites; *or*

(C) Civil weather or civil meteorological satellite earth stations; *and*

(ii) Designed for an operating frequency not exceeding 31 GHz;

NOTES:

1. Nothing in paragraph (a) of this ECCN 1520A permits the export of technical data for equipment employing quadrature-amplitude-modulation (QAM) techniques, *except* technical data for use, i.e., installation, operation or maintenance.

2. Nothing in paragraph (a) of this ECCN 1520A permits the export of technical data for equipment excepted from control by paragraph (a)(6) of this ECCN 1520A, *except* technical data for installation, operation or maintenance.

(b) Tropospheric scatter communication equipment, *except* when having all the following characteristics:

(1) Being designed for fixed civil use;

(2) Operating at fixed frequencies of 2.7 GHz or less;

(3) Using frequency modulation; *and*

(4) Having a power amplifier output of 10 kW or less;

(c) Stand-alone radio transmission media simulators/channel estimators and "specially designed software" therefor, specially designed for testing equipment controlled by paragraphs (a) and (b) of this ECCN 1520A, *except* those in which the adjustments are only made manually.

Note 1: This ECCN 1520A does not control equipment for civil television transmission or for general commercial traffic, or technical data for the installation, operation and maintenance therefor, provided that the equipment;

(a) Is not designed for operation at a total digital transfer rate exceeding 45 million bit/s;

(b) Does not employ quadrature-amplitude-modulation (QAM) techniques; *and*

(c) Has a maximum operating frequency that does not exceed 23.6 GHz.

Note 2: This ECCN does not control analog microwave transmission equipment for civil industrial use, e.g., remote supervision, control and metering of oil and gas pipelines, civil public utility services (e.g., electricity networks) including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunication links, or technical data for the installation, maintenance and operation therefor, provided that the maximum operating frquency does not exceed 23.6 GHz.

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Ground communication radio equipment for use with temporarily fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 20 GHz;

(c) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by paragraph (a) or (b) of this Note;

(d) Power amplifiers not exceeding 10 W and 6/4-GHz-transmitters/receivers for communication satellites;

(e) Equipment specially designed to receive civil meteorological data provided that:

(1) The equipment or systems are designed and used for fixed civil meteorological applications;

(2) The equipment has all the following characteristics:

(i) It is specially designed to receive and process Weather Facsimile (WEFAX) or receive and process meteorological data from civil weather satellites such as:

(A) GOES (Geostationary Operating Environmental Satellite);

(B) NOAA (National Oceanic and Atmospheric Administration) polar orbiting satellites; or

(C) The ARGOS meteorological satellite;

(ii) "Frequency agility" techniques are not incorporated; *and*

(iii) The weather satellite ground system frequencies do not exceed 1,750 MHz.

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of digital radio relay communications equipment, provided that:

(a) It is for fixed civil installations;

(b) It operates at fixed frequencies not exceeding 23.6 GHz;

(c) It is designed for operation at a total bit rate not exceeding 156 million bit/s; and

(d) It does not employ quadrature amplitude modulation techniques above 64 QAM.

Notes:

1. The maximum of 156 million bit/s does not preclude total digital transfer rates of maximally 187.2 million bit/s to allow for line coding and overhead.

2. A license application to export any commodities covered by (Advisory) Note 4 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

(Advisory) Note 5: Licenses will receive favorable consideration for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of technical data controlled by this ECCN 1520A and of instrumentation, test equipment, and components and "specially designed software" therefor, and materials and components controlled by this ECCN 1520A or other entries on the Commodity Control List, for modification or production of equipment or systems, provided that:

Note: Technical data for general purpose computers is not eligible for consideration under (Advisory) Note 5; i.e., it continues to be controlled under ECCN 1565A.

(a) The characteristics of the equipment or systems are limited to those that make them free from control or eligible for consideration under (Advisory) Note 4;

(b) Modification of the equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of (Advisory) Note 4;

(c) Testing of large scale integrated (LSI) circuits or those with higher components densities is limited to go/no go tests;

NOTE: Paragraph (c) of (Advisory) Note 5 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilize the transferred technical data, instrumentation and test equipment;

(e) All "software" shall be exported in machine-executable form only;

(f) Development technical data is not included;

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another controlled destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recover source code or upgrade the system beyond the performance threshold or features of (Advisory) Note 4 as applicable;

(i) End-use reporting of the installed radio relay communications equipment or systems will be provided as per (Advisory) Note 4;

NOTES:

1. No export under (Advisory) Note 5 shall establish a precedent for export approval under other entities in the Commodity Control List.

2. A license application to export any commodities covered by (Advisory) Note 5 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

1522A "Lasers", and specially designed components and accessories therefor including amplification stages.

NOTE: This ECCN 1522A does not control equipment containing "lasers". For the control status of equipment containing "lasers", see the appropriate ECCN.

Controls for ECCN 1522A

Unit: Report lasers in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: Special licenses are *not* available for equipment of the following description: 1. Single aperture lasers with an output greater than one thousand Joules per nanosecond and 2. Tunable diode lasers. See part 773 of this subchapter for special licenses available for other commodities defined in ECCN 1522A.

List of "Lasers" and Specially Designed Components and Accessories Controlled by ECCN 1522A

(a) Gas "lasers", as follows:

(1) Excimer "lasers" having any of the following characteristics:

(i) An output wavelength not exceeding 150 nm and either of the following:

(A) An output energy exceeding 50 mJ per pulse; *or*

(B) An average or continuous wave (CW) output power exceeding 1 W;

(ii) An output wavelength exceeding 150 nm, but not exceeding 190 nm, and either of the following:

(A) An output energy exceeding 1.5 J per pulse; *or*

(B) An average or CW output power exceeding 120 W;

(iii) An output wavelength exceeding 190 nm, but not exceeding 360 nm, and either of the following:

(A) An output energy exceeding 5 J per pulse; *or*

(B) An average or CW output power exceeding 500 W; *or*

(iv) An output wavelength exceeding 360 nm and either of the following:

(A) An output energy exceeding 1.5 J per pulse; *or*

(B) An average or CW output power exceeding 30 W;

(2) Metal vapor "lasers", as follows:

(i) Copper (Cu) "lasers" with an average or CW output power exceeding 20 W;

(ii) Gold (Au) "lasers" with an average or CW output power exceeding 5 W;

(iii) Sodium (Na) "lasers" with an output power exceeding 5 W;

(3) Carbon monoxide (CO) "lasers" having either of the following:

(i) An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 5,000 W; *or*

(ii) An average or CW output power exceeding 5,000 W;

(4) Carbon dioxide (CO_2) "lasers" having any of the following characteristics:

(i) A CW output power exceeding 10 kW;

(ii) A pulsed output with a "pulse duration" exceeding 10 microseconds and either of the following:

(A) An average output power exceeding 10 kW; *or*

(B) A pulsed "peak power" exceeding 100 kW;

(iii) A pulsed output with a "pulse duration" not exceeding 10 microseconds, but exceeding 500 ns, and either of the following:

(A) A pulse energy exceeding 5 J; *or*

(B) An average output power exceeding 1.2 kW; *or*

(iv) A pulsed output with a "pulse duration" not exceeding 500 ns and either of the following:

(A) A pulse energy exceeding 2 J; *or*

(B) An average output power exceeding 1.2 kW;

NOTE: Pulsed "lasers" include those that run in a CW mode with pulses superimposed.

(5) "Chemical lasers", as follows:

(i) Hydrogen Fluoride (HF) "lasers";

(ii) Deuterium Fluoride (DF) "lasers";

(iii) Oxygen Iodine (O_2I) "lasers";

(6) Gas discharge and ion "lasers", as follows:

(i) Nitrogen "lasers" with either of the following characteristics:

(A) An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 120 W; *or*

(B) An average or CW output power exceeding 120 W;

(ii) Krypton ion or argon ion "lasers" with either of the following characteristics:

(A) An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

(B) An average or CW output power exceeding 30 W;

(7) Other gas "lasers" having any of the following characteristics:

(i) An output wavelength not exceeding 150 nm and either of the following:

(A) An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(B) An average or CW output power exceeding 1 W;

(ii) An output wavelength exceeding 150 nm, but not exceeding 800 nm, and either of the following:

(A) An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W;

(B) An average or CW output power exceeding 30 W;

(iii) An output wavelength exceeding 800 nm, but not exceeding 1,400 nm, and either of the following:

(A) An output energy exceeding 0.25 J per pulse and a pulsed "peak power" exceeding 10 W; *or*

(B) An average or CW output power exceeding 10 W; *or*

(iv) An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

(b) Semiconductor "lasers", as follows:

NOTE: Semiconductor "lasers" are commonly called laser diodes.

(1) Individual semiconductor "lasers" having either of the following:

(i) An average output power exceeding 100 nW; *or*

(ii) A wavelength exceeding 1,000 nm;

(2) Arrays of semiconductor "lasers" incorporating individual semiconductor "lasers", having any of the following characteristics:

(i) An output energy exceeding 500 microjoules per pulse and a pulsed "peak power" exceeding 10 W;

(ii) An average or CW output power exceeding 10 W; *or*

(iii) A wavelength exceeding 1,000 nm;

(c) Solid state "lasers", as follows:

(1) Tunable "lasers" having any of the following:

NOTE: This paragraph (c) controls titanium-sapphire and alexandrite "lasers".

(i) An output wavelength less than 600 nm and either of the following:

(A) An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(B) An average or CW output power exceeding 1 W;

(ii) An output wavelength of 600 nm or more, but not exceeding 1,400 nm, and either:

(A) An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 20 W; *or*

(B) An average or CW output power exceeding 20 W; *or*

(iii) An output wavelength exceeding 1,400 nm and either of the following:

(A) An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(B) An average or CW output power exceeding 1 W; *or*

(2) Non-"tunable" "lasers", as follows:

NOTE: For the purpose of this ECCN 1522A, rare earth doped solid-state "lasers" are considered to be non-"tunable".

(i) Ruby "lasers" having an output energy exceeding 20 J per pulse;

(ii) Neodymium glass "lasers" having an output energy exceeding 20 J per pulse;

(iii) Neodymium doped (other than glass) "lasers" having an output wavelength between 1,000 nm and 1,100 nm and any of the following characteristics:

NOTE: Neodymium doped (other than glass) "lasers" having an output wavelength other than between 1,000 nm and 1,100 nm are described in paragraph (c)(2)(iv) of this ECCN;

(A) Pulse-excited and Q-switched, having either of the following:

(*1*) A single transverse mode output having any of the following:

(*i*) A peak power exceeding 100 MW; *or*

(*ii*) An average output power exceeding 20 W; *or*

(*iii*) A pulsed energy exceeding 2 J;

(*2*) A multiple-transverse mode output having any of the following:

(*i*) A "peak power" exceeding 200 MW;

(*ii*) An average output power exceeding 50 W; *or*

(*iii*) A pulsed energy exceeding 2 J;

(B) Pulse-excited and non-"Q-switched", having either of the following:

(*1*) A single transverse mode output having either of the following:

(*i*) A "peak power" exceeding 100 kW; *or*

(*ii*) An average output power exceeding 50 W; *or*

(*2*) A multiple transverse mode output having either of the following:

(*i*) A "peak power" exceeding 1 MW; *or*

(*ii*) An average power exceeding 500 W; *or*

(C) Continuously excited and having either of the following:

(*1*) A single transverse mode output having either of the following:

(*i*) A "peak power" exceeding 100 kW; *or*

(*ii*) An average or CW output power exceeding 50 W; *or*

(*2*) A multiple-transverse mode output having either of the following:

(*i*) A "peak power" exceeding 1 MW; *or*

(*ii*) An average or CW output power exceeding 500 W;

NOTE: Pulse excited "lasers" include those that run in a continuously excited mode with pulse excitation superimposed.

(iv) Other non-"tunable" "lasers", having any of the following:

(A) A wavelength less than 150 nm and either of the following:

(*1*) An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(*2*) An average or CW output power exceeding 1 W;

(B) A wavelength of 150 nm or more, but not exceeding 800 nm, and having either of the following:

(*1*) An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

(*2*) An average or CW output power exceeding 30 W;

(C) A wavelength exceeding 800 nm, but not exceeding 1,400 nm, as follows:

(*1*) "Q-switched lasers" with any of the following:

(*i*) An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 50 W;

(*ii*) An average output power exceeding 10 W for single-mode "lasers"; *or*

(*iii*) An average output power exceeding 30 W for multimode "lasers";

(*2*) Non-"Q-switched lasers" with either of the following:

(*i*) An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

(*ii*) An average or CW output power exceeding 50 W; *or*

(D) A wavelength exceeding 1,400 nm and either of the following:

(*1*) An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(*2*) An average or CW output power exceeding 1 W;

(d) Dye and other liquid "lasers", having any of the following:

(1) A wavelength less than 150 nm and either of the following:

(i) An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(ii) An average or CW output power exceeding 1 W;

(2) A wavelength of 150 nm or more, but not exceeding 800 nm, and any of the following:

(i) An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 20 W;

(ii) An average or CW output power exceeding 20 W; *or*

(iii) A pulsed single longitudinal mode oscillator with an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the "pulse duration" is less than 100 ns;

(3) A wavelength exceeding 800 nm, but not exceeding 1,300 nm, and either of the following:

(i) An output energy exceeding 0.5 per pulse and a pulsed "peak power" exceeding 10 W; *or*

(ii) An average or CW output power exceeding 10 W; *or*

(4) An wavelength exceeding 1,300 nm and either of the following:

(i) An output energy exceeding 10 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

(ii) An average or CW output power exceeding 1 W;

(e) Free election "lasers";

NOTE 1: This ECCN 1522A does not control Helium-Neon and Helium-Cadmi "lasers".

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in County Groups QWY of non-"Q-switched" neodymium glass "lasers" having an output energy not exceeding 50 J pe pulse.

(ADVISORY) NOTE 3 for People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following:

(a) "Tunable" pulsed flowing-dye "lasers" having all of the following characteristics and specially designed components therefor:

(1) An output wavelength less than 80 nm;

(2) A "pulse duration" not exceeding 10 ns; *and*

(3) A peak output power not exceeding 15 MW;

(b) CO_2, CO or CO/CO_2 "lasers" having an output wavelength in the range from 9 to 11 micrometers and pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW or a CW maximum rated single or multimode output power not exceeding 10 kW;

(c) Minimum quantities of semiconductor "lasers", having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW, that are designed and intended for use with a civil fiber optic communication system that is not controlled under an "A"-level entry in the CCL or that is described in an (Advisory) Note for the People's Republic of China under ECCNs 1519A or 1526A.

NOTE 4: For the control status of Raman "lasers", see the paragraphs in this ECCN 1522A that describe the pumping "laser" source.

Definitions of Terms: The following are definitions of terms used in ECCN 1522A:

Chemical Laser—

A "laser" in which the excited species is produced by the output energy from a mical reaction.

Laser—

An assembly of components to produce tially and coherent light that is amplid by stimulated emission of radiation.

Peak power—

Energy per pulse in Joule divided by the se duration in seconds.

Pulse duration—

Duration of a pulse measured at full th half maximum (FWHM) intensity vels.

Q-switched laser—

A "laser" in which energy is stored in the pulation inversion or in the optical resotor and subsequently emitted in a pulse.

Tunable—

The ability of a "laser" to produce a connuous output at all wavelengths over a nge of several "laser" transitions. A line lectable "laser" produces discrete wavengths within one "laser" transition and is t considered "tunable".

26A Cable and optical fibers, and components and accessories.

Controls for ECCN 1526A

Unit: Report cable in "feet."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 73.

List of Commodities Controlled by ECCN 1526A

(a) Unarmored or single-armored ean cable having an attenuation of 1.62 dB/km (3.0 dB per nautical mile) or less, measured at a frequency of 600 kHz;

(b) Optical-fiber communication able or optical fibers therefor (except igtails that are not nuclear radiation ardened), having any of the following characteristics:

TECHNICAL NOTE: "Pigtails" are pieces of optical fiber or cable no longer than 50 m that in some cases are attached to components or instruments.

(1) The optical fiber is designed for single mode light propagation;

(2) The optical fiber:

(i) Is designed for multimode light propagation; *and*

(ii) Has an attenuation of less than 1.0 dB/km at a wavelength of 1300 nm; *or*

(3) Optical fibers capable of withstanding a "proof test" tensile strength of 1.1 x 10^9 N/m^2 or more;

(4) Specially designed for underwater use; *or*

(5) Specially designed to be insensitive to nuclear radiation;

(c) Optical fibers for sensing purposes, having any of the following characteristics:

(1) Specially fabricated either compositionally or structurally, or modified by coating to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive;

(2) Modified structurally or by coating to have either:

(i) A "beat length" of more than 50 cm (low birefringence), *except* if designed for operation at wavelengths of less than 650 nm; or

(ii) A "beat length" of less than 5 cm (high birefringence);

(d) Secure communications cable, being either coaxial or multiconductor communication cable protected by mechanical or electrical means from physical damage or intrusion in such a manner that communications security is maintained between terminals without the necessity for encryption.

(e) Components and accessories specially designed for the above optical fibers or cable, including fiber-optic bulkhead or hull penetration connectors impervious to leakage at any depth for use in ships or vessels, and multiport fiber-optic couplers (including but not limited to T, Star, bi-directional and wavelength division multiplexing and demultiplexing couplers), *except connectors for use with optical fibers or cable with a repeatable coupling loss of 0.5 dB or more.* (See also Supp. No. 2 to Part 770 of the Export Administration Regulations.)

Note 1: Sub-paragraph (d) of ECCN 1526A does not control cable that is "armored" by only either a tough outer sheath or an electromagnetic screen.

Note 2: Associated equipment for sub-paragraphs (a), (b), and (c), and specially designed components therefor, are covered under ECCN 1519A.

(Advisory) Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of silica-based optical fibers and optical cable, other cable, connectors and couplers controlled by sub-paragraphs (a), (b)(1) to (b)(4), or (e) of ECCN 1526A, provided that:

(a) The cable, optical fibers, connectors or couplers are for a specific civil end-use;

(b) The quantities of cable, optical fibers, connectors or couplers are normal for the purpose;

(c) The optical fibers specially designed for the underwater use:

(i) Are not controlled by sub-paragraph (b)(1) of ECCN 1526A; and

(ii) Have performance characteristics inferior to those described in sub-paragraphs (b)(2) or (b)(3); *and*

(d) Connectors and couplers controlled by sub-paragraph (e) are not:

(i) Fiber-optic bulkhead or hull penetration connectors, specially designed for use in ships or vessels; *or*

(ii) Wavelength division multiplex type fiber-optic couplers.

(Advisory) Note 4 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fibers controlled by paragraph (c)(2) of this ECCN 1526A, when exported for identifiable civil applications, having all of the following characteristics:

(a) Not fabricated to be nuclear radiation sensitive;

(b) A "beat length" of more than 50 cm (low birefringence); *and*

(c) Not optimized for operation at any wavelength exceeding 1,370 nm.

Definitions of Terms

Beat length

Beat length is defined as the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve 2 pi radian(s) phase difference.

Proof test

"Proof test" consists of on-line or off-line production screen testing that dynamically applies as prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5m/se while passing between capstans ap proximately 15 cm in diameter. Th ambient temperature is a nominal 2 °C and relative humidity a nomin 40%.

1527A Cryptographic equipment and sp cially designed components therefo designed to ensure secrecy of comm nications (such as telegraphy, teleph ny, facsimile, video and data communi cations) or of stored information; an "software" controlling or compute performing the functions of such cryp tographic equipment.

Controls for ECCN 1527A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destina tions.

Commodities Not Eligible for Gener License GCT: Entire entry, *except*:

(1) Automatic bank teller equip ment, as defined as devices that pro vide bank account information, dis pense currency, process consume transactions, or act as point of sal terminals;

(2) Equipment whose only crypto graphic function is to authenticate data by calculation of a message au thentication code (MAC);

(3) Equipment whose only crypto graphic function is to protect pas words or personal identification num bers (PIN) to prevent unauthorized access to computing facilities; and

(4) Television descramblers using analog scrambling techniques for the purpose of entertainment.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1527A

Cryptographic equipment and anci lary equipment (such as teleprinters, perforators, vocoders, visual display units) designed to ensure secrecy of communications (such as telegraphy, telephony, facsimile, video, data) or of stored information, their specialized components; and software controlling or performing the function of such cryptographic equipment. Also video systems which, for secrecy purposes, use digital techniques (conversion of an analog, *i.e.*, video or facsimile, signal into a digital signal). (This ECCN also covers digital computers and differential analyzers (incremental computers) designed or modified for, or combined with, any cipher machines, cryptographic equipment, devices or techniques including software, microprogram control (firmware) and/or specialized logic control (hardware), associated equipment therefor, and equipment or systems incorporating such computers or analyzers), *except simple cryptographic devices or equipment only ensuring the privacy of communications, of the following description:*

(a) *Equipment for voice transmission making use of fixed frequency inversions and/or fixed band scrambling techniques in which the transposition changes occur not more frequently than once every 10 seconds;*

(b) *Standard civil facsimile and video equipment designed to ensure the privacy of communications by an analog transmission using nonstandard practices for intended receivers only (video system equipment effecting the transposition of analog data);*

(c) *Video systems for pay television and similar restricted audience television, including industrial and commercial television equipment using other than standard commercial sweep systems.*

Technical Note: No technical data or software controlled under this ECCN may be exported or reexported under General License *GTDR*.

Note: Exporters requesting a validated license from the Department of Commerce must provide a statement from the Department of State, Office of Munitions Control, verifying tha the equipment intended for export is under the licensing jurisdiction of the Department of Commerce.

Notes: 1. This ECCN also covers video systems that, for secrecy purposes, use digital techniques (e.g., conversion of an analog, i.e., video or facsimile, signal into a digital signal).

2. This ECCN does not cover simple cryptographic devices or equipment only ensuring the privacy of communications, as follows:

(a) Equipment for voice transmission making use of fixed frequency inversions or fixed band scrambling techniques in which the transposition changes occur not more frequently than once every 10 seconds;

(b) Standard civil facsimile and video equipment designed to ensure the privacy of communications by an analog transmission using non-standard practices for intended receivers only (video system equipment effecting the transposition of analog data);

(c) Video systems for pay television and similar restricted audience television, including industrial and commercial television equipment using other than standard commercial sweep systems.

3. "Digital computers" and digital differential analyzers (incremental computers) designed or modified for, or combined with, any cipher machines, cryptographic equipment, devices or techniques including "software", "microprogram" control ("firmware") or specialized logic control (hardware), associated equipment therefor, and equipment or systems incorporating such computers or analyzers are covered by this ECCN or by Supp. No. 2 to Part 770 of the Export Administration Regulations.

1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows.

Note: For "specially designed software", see Supp. No. 3 to Part 779.

Control for ECCN 1529A

Unit: Report in "number," parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for all items in paragraph (j) to Country Groups T & V, except $0 to the People's Republic of China; $3,000 for all other items to Country Groups T & V, except $0 to the People's Republic of China; $0 for all items to all other destinations.

Commodities Not Eligible for General License GCT: Equipment controlled under paragraphs (c) and (d) for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter.

Processing Code: EE."

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraph (c) and (d) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 766.18(a).

Special Licenses Available: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for commodities defined in ECCN 1529A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1529A

(a) Any testing or measuring equipment:

(1) Not described in any other ECCN in the Commodity Control List; *and*

(2) Designed for use at frequencies exceeding 18 Ghz;

NOTE: This paragraph (a)(2) does not control the following equipment having a maximum specified operating frequency of 26.5 GHz or less:

(a) Power meters;

(b) Broadband noise sources; *or*

(c) Noise figure meters;

(b) Logic analysers having any of the following characteristics, and specially designed accessories and specially designed components therefor:

(1) More than a total of 64 channels;

(2) A synchronous (state) channel sampling rate of more than 50 MHz;

(3) An asynchronous (timing) channel sampling rate of more than 200 MHz;

(4) Probe interfaces and inverse assemblers, *except those designed for use with a microprocessor or microcomputer microcircuit "family" that contains at least one microprocessor or microcomputer microcircuit not controlled by ECCN 1564A;*

(c) Cesium frequency standards having both of the following characteristics:

(1) Designed as reference standards for laboratory use; *and*

(2) Either of the following:

(i) A long-term drift (aging) over 24 hours or more of 1 part in 10^{10} or less; *or*

(ii) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

(d) Equipment containing cesium frequency standards having any of the following characteristics:

(1) Designed for mobile use and having a long-term drift (aging) over 24 hours or more of 1 part in 10^{9} or less;

(2) Designed for fixed ground use and having a long-term drift (aging) over 24 hours or more of 5 parts in 10^{10} or less; *or*

(3) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

(e) "Comb frequency generators" designed for use at frequencies exceeding 12.5 GHz;

(f) Specially calibrated microwave instrumentation receivers capable of measuring amplitude and phase simultaneously and designed for use at frequencies exceeding 1 GHz;

NOTE: This paragraph (f) includes receivers used in equipment for the near- and far-zone measurement of phase and amplitude patterns of antennae.

(g) Digital counters having any of the following characteristics:

(1) Capable of performing frequency measurements above 20 GHz;

(2) Capable of measuring either the frequency or the change in phase of frequency within a pulse ("Pulse frequency profiling") using either internally or externally gated sampling intervals of 100 ns or less; *or*

(3) Capable of measuring "burst frequencies" exceeding 250 MHz for a burst duration of less than 2 ms.

(h) Digital voltage measuring equipment capable of more than 1,000 readings per second with a resolution of more than 4½ digits, not including changes in range or polarity;

NOTE: This paragraph (h) does not control:

(a) Visual quantization apparatus capable of providing an average value, displayed or not, of the results of the measurement;

(b) Multichannel analyzers of all types used in nuclear experimentation; or

(c) Industrial telemeasuring devices in which a pre-set storage value is used as a basis for measuring.

(i) General purpose data communication protocol analyzers, testers and simulators for X.25 level 3 and above as well as Integrated Services Digital Networks (ISDN) protocols (CCITT/ISO);

(j) Microprocessor or microcomputer development instruments or systems, capable of developing "software" for, or capable of programming microcircuits controlled by ECCN 1564A.

NOTE 1: This paragraph (j) includes accessories specially designed for these microprocessor or microcomputer development instruments or systems such as:

(a) "Cross-hosted" assemblers, "cross-hosted" compilers;

(b) Adapter interfaces for prototypes and/or emulation probes;

(c) Debuggers;

(d) So-called personality modules that contain more than one of the accessories enumerated under paragraphs (a) to (c) of this ECCN 1529A.

NOTE 2: This paragraph (j) does not control microprocessor or microcomputer development instruments or systems having all of the following characteristics:

(a) They can be used to develop "software" for, or to program a "family" of microprocessor or microcomputer microcircuits not designed within a controlled country.

(b) They can be used only for microprocessor or microcomputer microcircuits having both:

(1) An operand (data) word length of no more than 16 bits; *and*

(2) An arithmetic logic unit (ALU) not wider than 32 bits; *and*

(c) The "family" contains at least one microprocessor or microcomputer microcircuit that is not controlled by ECCN 1564A.

NOTE 3: "Cross-hosted" compilers or "cross-hosted" assemblers, needed for use with a particular microprocessor or microcomputer development instrument or system, not controlled by this paragraph (j), must contain only the minimum "software" in machine executable form to perform the functions for which they were designed. To make other, incompatible instruments of systems perform the same functions must require:

(a) Modification of this "software"; *or*

(b) Additional of "programs".

NOTE 4: For "cross-hosted" compilers or "cross-hosted" assemblers that are not specially designed for use with microprocessor or microcomputer development instruments or systems described in this paragraph (j), see Supp. 3 to part 779.

TECHNICAL NOTES: Definition of terms used in this ECCN 1529A.

1. *"Burst frequency"* measurement. The capability of a counter to start only when the input signal is present and stop counting at the completion of the burst.

2. *"Comb frequency generators."* Apparatus that generate a spectrum of harmonics.

3. *"Family."* Consists of microprocessor or microcomputer microcircuits that have:

(a) The same architecture;

(b) The same basic instruction set; *and*

(c) The same basic technology (e.g., only NMOS or only CMOS).

4. *"Pulse frequency profiling."* The capability of measuring the changes of frequency (or phase) within a pulse as a function of time; such changes in frequency would be present in a transmitted pulse-compression radar pulse ("chirp radar"). This profiling may be achieved by internal or external gating. "Pulse frequency profiling" is not intended to include "frequency modulation tolerance" while it is being frequency modulated and is of interest to the communication field. The ability to perform measurement of the time interval of the pulse itself (pulse width) as opposed to frequency measurements within a pulse is covered under time interval instruments in paragraph (f) above.

NOTE 1: For specially designed testing and measuring equipment controlled by other ECCNs on the Commodity Control List, see those ECCNs.

4529B Electronic equipment for testing, measuring or for microprocessor/microcomputer development.

NOTE: For "specially designed software", see Supp. No. 3 to Part 779.

Controls for ECCN 4529B

Unit: Report in "number," parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraphs (a) or (b) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

Special Licenses Available: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes

(§ 776.18(c)). See Part 773 for special licenses available for commodities defined in ECCN 1529A.

Technical Data: Exports of certain related technical data require a validated license to all destinations (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 4529B

(a) Frequency standards having both of the following characteristics:

(1) Designed as reference standards for laboratory use; and

(2) Either of the following:

(i) A long-term drift (aging) over a period of 24 hours or more of 1 part in 10^{10} or less; or

(ii) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

(b) Equipment containing frequency standards, having any of the following characteristics:

(1) Designed for mobile use and having a long-term drift (aging) over a period of 24 hours or more of 5 parts in 10^{9} or less;

(2) Designed for fixed ground use and having a long-term drift (aging) over a period of 24 hours or more of 5 parts in 10^{10} or less; or

(3) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

4530B UF$_6$ Mass spectrometers.

Controls for ECCN 4530B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limits: $2,000 for Country Groups T & V and Canada; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Spectrometers Controlled by ECCN 4530B

(a) Mass spectrometers, magnetic or quadrupole:

(1) Instruments having all of the following characteristics:

(i) Unit resolution greater than mass 320; and

(ii) Electron-bombardment ionization source; and

(2) Having any of the following characteristics:

(i) Molecular beam ion sources;

(ii) Ion source chambers constructed of or lined with nichrome or monel, or nickel plated;

(iii) A collector system suitable for simultaneous collection of two or more isotopic species; or

(b) Sources for mass spectrometers:

(1) Molecular beam source; or

(2) Ion source chambers constructed of or lined with nichrome or monel, or nickel plated; or

(3) Sources for mass spectrometers designed especially for use with UF$_6$.

Technical Data: Exports of related technical data require a validated license to all destinations, including Canada.

1531A "Frequency synthesizers", and equipment containing such "frequency synthesizers".

Controls for ECCN 1531A

Unit: Report synthesizers and equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Frequency synthesizers, airborne communication equipment, digitally-controlled radio receivers, and radio transmitters controlled by paragraphs (a), (c), and (d), that will be used as follows:

(1) As avionics equipment in complete rocket systems and unmanned air vehicle systems described in § 776.18(a);

(2) In vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); or

(3) In launch and ground support equipment usable for the systems described in § 776.18(a) of this subchapter.

Processing Code: EE.

Reason for Control: National security; foreign policy. Foreign policy controls apply to nuclear weapons delivery non-proliferation controls on commodities described in paragraphs (a), (c), and (d) as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 776.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 776.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1531A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Frequency Synthesizers Controlled by ECCN 1531A

(a) "Frequency synthesizers" containing frequency standards covered by ECCN 1529A(c);

(b) Instrument "frequency synthesizers" and synthesized signal generators, and specially designed components and accessories therefor, designed for ground use, producing output frequencies whose accuracy and short-and long-term stability are controlled by, derived from, or disciplined by the input frequency or internal master standard frequency, and having *any* of the following characteristics:

(1) A maximum synthesized output frequency of more than 550 MHz;

(2) Any of the following noise characteristics:

(i) A single sideband (SSB) phase noise better than –120 dBc/Hz when measured at a 20 kHz offset from the carrier frequency;

(ii) A single sideband (SSB) phase noise better than –106 dBc/Hz when measured at a 100 Hz offset from the carrier frequency;

(iii) An integrated phase noise better than –60 dBc/Hz referred to a 30 kHz band centered on the carrier and excluding the 1 Hz band centered on this carrier; *or*

(iv) An integrated AM phase noise better than –70 dBc/Hz referred to a 30 kHz band centered on the carrier and excluding the 1 Hz band centered on this carrier;

NOTE: Synthesized signal generators that are controlled for export only by paragraphs (b)(1) or (b)(2)(i) may be exported up to a maximum synthesized output frequency of 1,400 MHz or down to a single sideband phase noise of –136 dBc/Hz when measured at an offset of 20 kHz from a carrier frequency of 100 MHz, provided the technology supplied is only the minimum necessary for the use (*i.e.*, installation, operation and maintenance) of such generators.

(3) "Electrically programmable in frequency" with a "frequency switching time" of less than 5 ms;

(4) "Electrically programmable in phase" with a switching time from one selected phase value to another of less than 10 ms, *except* equipment incorporating pre-emphasis networks for frequency modulation;

(5) Having a level of spurious components in the output, measured relative to the selected output frequency, better than:

(i) –60 dB harmonic; *or*

(ii) –92 dB nonharmonic;

(6) Having more than 3 different selected synthesized output frequencies available simultaneously from one or more outputs; *or*

(7) With facilities for pulse modulation of the output frequency;

(c) Airborne communication equipment using frequency synthesizers, as follows, and specially designed components and accessories therefor:

(1) Designed to receive or transmit frequencies of more than 156 MHz;

(2) Incorporating facilites for the rapid selection of more than 200 channels per equipment, *except those equipments operating in the frequency range of 108 to 137 MHz incorporating facilities for the rapid selection of 760 channels or fewer at not less than 25 kHz channel spacing, and that have been in normal civil use for at least one year;*

(3) With a "frequency switching time" of less than 10 milliseconds;

(4) "Frequency synthesizers", designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in sub-paragraph (b) of this ECCN.

Note: See also ECCN 1501A(a).

(d) Radio transmitters incorporating transmitter drive units, exciters and master oscillators using frequency synthesis, as follows; specially designed components and accessories therefor:

(1) Having an output frequency of more than 550 MHz, *except:*

(i) Television broadcasting transmitters having all of the following characteristics:

(A) an output frequency not exceeding 960 MHz;

(B) A frequency resolution of not better (less) than 1 kHz; *and*

(C) The manually-operated "frequency synthesizer" incorporated in or driving the transmitter has an output frequency not exceeding 120 MHz;

(ii) Ground communication equipment designed for civil use in the land mobile or marine service, e.g., cellular radio-communication systems, amateur radio or portable radiophone, having all of the following characteristics:

Notes:

1. For equipment containing cryptographic equipment or "software", see ECCN 1527A.

2. Nothing in paragraph (d) of this ECCN 1531A permits the export of technical data for the development or production of digital equipment or "specially designed software" for use in digital civil land mobile networks.

(A) Operating frequency not more than 1.3 GHz;

(B) A power output of 50 W or less for mobile units, or 300 W or less for fixed units;

(C) For cellular radio base stations, use of analog radio transmission only;

(D) A transmitter "frequency switching time" of 2 nm or more:

(E) A frequency resolution of not better than 2.5 kHz; *and*

(F) No features controlled by ECCN 1517A(c);

(2) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(3) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated "frequency synthesizer";

(4) "Frequency synthesizers" designed for equipment described in this paragraph (d), whether supplied separately or with the said equipment, exceeding the parameters specified in paragraph (b) of this ECCN 1531A, *except* those specially designed for radio telephones freed from control under paragraph (d)(1)(ii) of this ECCN 1531A.

Technical Notes: 1. "Frequency synthesizer" means any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

2. "Frequency switching time" means the maximum time (*i.e.*, DELAY), WHEN SWITCHED FROM ONE SELECTED OUTPUT FREQUENCY TO ANOTHER SELECTED OUTPUT FREQUENCY, TO REACH:

(a) A frequency within 100 Hz of rhe final frequency; *or*

(b) An output level within 1.0 dB of the final output level.

Note 1: This ECCN does not control equipment in which the output frequency is produced by the addition or subtraction of two or more crystal oscillator frequencies, which may be followed by multiplication of the result.

(Advisory) Note 2 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following, and specially designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instrument "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) and (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.1 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided that:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (d)(1)(ii) above remain in force;

(3) The equipment has a "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either "frequency agility" or other spread spectrum techniques; *and*

(5) The synthesizers must be embedded in the radio receivers or transmitters;

1533A Signal analyzers (including spectrum analyzers), with any of the following characteristics, and specially designed components, and accessories therefor.

Note: For 'specially designed software', see Supp. 3 to part 779.

Controls for ECCN 1533A

Unit: Report analyzers in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: "Dynamic signal analyzers" controlled by paragraph (b) for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter.

Processing Code: EE.

Reason for Control: National security and foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraph (b) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

Special Licenses Available: See part 773.

List of Equipment Controlled by ECCN 1533A

(a) "Signal analyzers" having any of the following characteristics:

(1) Capable of analyzing frequencies exceeding 18 GHz;

(2) Capable of analyzing frequencies exceeding 2.3 GHz with a "frequency span" of more than 2.3 GHz; *or*

(3) Using time compression of the input signal;

(b) "Dynamic signal analyzers", *except when having a "real-time bandwidth" less than 5.12 kHz;*

Note: Nothing in paragraph (b) of this ECCN 1533A permits the export of technical data for "dynamic signal analyzers", *except* the minimum technical data required for use, i.e., installation, operation and maintenance.

(c) "Swept frequency network analyzers" or sweep generators:

(1) For the automatic measurement of complex equivalent circuit parameters over a range of frequencies and having a maximum operating frequency exceeding 20 GHz; *or*

(2) That cannot be controlled remotely for the measurement of complex equivalent circuit parameters over a range of frequences and having a maximum operating frequency exceeding 40 GHz;

Note: This does not include equipment for continuous wave, point-to-point measurement.

(d) Scalar network analyzers having a maximum operating frequency exceeding 20 GHz.

Technical Note: Definition of terms used in this ECCN 1533A:

1. *"Signal analyzers."* Apparatus capable of measuring and displaying basic properties of the single-frequency components of multi-frequency signals.

2. *"Dynamic signal analyzers."* "Signal analyzers" that use digital sampling and transformation techniques to form a Fourier spectrum display of the given waveform including amplitude and phase information.

3. *"Real-time bandwidth."* For "dynamic signal analyzers" is the widest frequency range that the analyzer can output to display or mass storage without causing any discontinuity in the analysis of the input data. For analyzers with more than one channel, the channel configuration yielding the widest "real-time bandwidth" shall be used to make the calculation.

4. *"Frequency span."* The maximum range of the frequency segment displayed.

Note 1: This ECCN does not control:

(a) Optical spectrum analyzers such as:

(1) Prism or grating monochrometers;

(2) Optical interferometers;

(3) Optical spectrometers;

(b) Equipment only using constant percentage bandwidth filters (also known as octave or fractional octave filters);

(c) Medical equipment containing, as an integral part, "signal analyzers".

(Advisory) Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "dynamic signal analyzers" controlled by paragraph (b) above provided they:

(a) Have no zoom capability; *and*

(b) Cannot compute 512 real spectral lines in less than 50 ms.

(ADVISORY) NOTE 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of swept frequency network analyzers or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely.

1534A Flatbed microdensitometers (except cathode-ray types) having any of the characteristics in the List below, and specially designed components therefor.

Controls for ECNN 1534A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; nuclear non-proliferation. There are no controls for nuclear non-proliferation reasons on exports to those countries listed in Supp. No. 2 or 3 to Part 773.

Special Licenses Available: A Distribution License is available for shipments to countries listed in Supp. Nos. 2 or 3 to Part 773.

List of Flatbed Microdensitometers Controlled by ECCN 1534A

Flatbed microdensitometers, except cathode-ray types, *specially designed parts, components and assemblies therefor, having any of the following characteristics:*

(a) A recording or scanning rate exceeding 5,000 data points per second;

(b) A figure of merit better (less) than 0.1, defined as the product of the density resolution (expressed in density units) and the spatial resolution (expressed in micrometers);

NOTE: Paragraph (b) of this ECCN does not control equipment with a spatial resolution not better (less) than 2 micrometers and a density resolution not better (less) than 0.01 density unit.

(c) An optical density range greater than 0 to 4.

TECHNCIAL NOTE: Density resolution (expressed in density units) is measured over the optical density range of the instrument.

(ADVISORY) NOTE: (GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment specially designed for medical applications, provided that the equipment is a reasonable requirement for the stated application.

1537A Microwave, including millimetric wave, equipment capable of operating at frequencies over 10.5 GHz.

Controls for ECCN 1537A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1537A

NOTE: For microwave equipment specially designed for equipment described by ECCNs 1501A, 1517A, 1520A, or 1529A, see these ECCNs.

(a) Rigid and flexible waveguides designed for use at frequencies in excess of 26.5 GHz;

(b) Waveguides having a bandwidth ratio above 1.7 : 1;

(c) Directional couplers having a bandwidth ratio above 1.7 : 1 and directivity over the band of 20 dB or more;

(d) Phased array antennae and subassemblies, designed to permit electronic control of beam shaping and pointing (see Supp. No. 2 to part 770 of the Export Administration Regulations), and specially designed components therefor, including duplexers, phase shifters and associated high speed diode switches;

(e) Other antennae specially designed for operation at frequencies above 30 GHz having a diameter of less than 1 m, and specially designed components therefor;

(f) Microwave assemblies and sub-assemblies capable of being used at frequencies above 23.6 GHz and having circuits fabricated by the same processes used in integrated circuit technology, which include active circuit elements;

(g) Microwave assemblies and sub-assemblies that contain band-pass or band-stop filters and are capable of operating at 23.6 GHz or more;

(h) Amplifiers having an instantaneous bandwidth of more than half an octave (i.e., the highest operating frequency is more than 1.5 times the lowest operating frequency).

NOTE: Paragraph (h) does not control parametric or paramagnetic amplifiers having any of the following characteristics:

(a) Specially designed for medical applications;

(b) Specially designed for use in "simple educational devices" and operate at industrial, scientific or medical (ISM) frequencies; *or*

(c) An output power of not more than 10 W and specially designed for:

(1) Industrial or civilian intrusion detection and alarm systems;

(2) Traffic or industrial movement control and counting systems;

(3) Systems for the detection of environmental pollution of air or water; *or*

(4) "Simple education devices";

TECHNICAL NOTE: "Simple education devices" are devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

(ADVISORY) NOTE 1: Paragraph (d) of this ECCN 1537A does not control duplexes and phase shifters specially designed for use in civil television systems or in other civil radar or communication systems not controlled elsewhere in the Commodity Control List.

(ADVISORY) NOTE 2 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of:

(a) Microwave equipment controlled for export by paragraphs (a), (b) or (c) of this ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument;

(b) [Reserved]

5541F Cathode-ray tubes.

Controls for ECCN 5541F

Unit: Report tubes in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $3,000 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to part 778; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: See Part 773.

List of Cathode-Ray Tubes Controlled by ECCN 5541F

Cathode-ray-tubes having any of the following characteristics:

(a) With traveling wave or distributed deflection structure using delay lines, or incorporating other techniques to minimize mismatch of fast phenomena signals to the deflection structure, *except* when using segmented plate (sectioned Y-plate) structures;

(b) Incorporating microchannel-plate electron multipliers, *except* cathode-ray tubes, having all of the following characteristics:

(1) The microchannel-plate electron multipliers have a hole pitch of 25 micrometers or more;

(2) The tubes are not ruggedized for military use;

(3) The tubes have a horizontal sweep slower than 200 ns/cm; and

(4) The electron gun is mounted parallel to the screen surface.

NOTE: Technology for the design or production of cathode-ray tubes incorporating microchannel-plate electron multipliers is not released under this paragraph (b).

(Specify by name and type number.)

5542F Triggered spark-gap switches and cold cathode tubes.

Controls for ECCN 5542F

Unit: Report tubes in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Items Controlled by ECCN 5542F

(a) Triggered spark-gaps, having an anode delay time of 15 microseconds or less and rated for a peak current of 3,000 A or more;

(b) Specially designed parts for triggered spark-gaps described in paragraph (a) of this ECCN 5542F;

(c) Equipment incorporating triggered spark-gaps described in paragraph (a) of this ECCN 5542F.

NOTE: Triggered spark-gaps are tubes with a structure consisting of two opposed anodes with shapes resembling flattened hemispheres, and with one or more triggering probes placed approximately in the center of one anode. The structure is sealed and contains a mixture of gases, principally nitrogen, under less then atmospheric pressure.

(d) Cold cathode tubes, whether gas-filled or not, operating in a manner similar to a spark gap, containing three or more electrodes and having all of the following characteristics:

(1) Rated for an anode peak voltage of 2,500 V or more;

(2) Rated for peak currents of 100 A or more;

(3) An anode delay time of 10 microseconds or less; *and*

(4) An envelope diameter of less than 25.4 mm (1 inch).

NOTE: Paragraph (d) of this ECCN 5542F controls gas "krytron" tubes, vacuum "krytron" tubes and similar tubes.

1548A Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor.

Controls for ECCN 1548A

Unit: Report tubes and semi-conductor devices in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Photosensitive Components and Dice and Wafers Therefor Controlled by ECCN 1548A

(a) Photosensitive components (including photodiodes, phototransistors, photothyristors, photoconductive cells and similar photosensitive components):

(1) Having a peak sensitivity at a wavelength longer than 1,200 nanometers or shorter than 190 nanometers; *or*

(2) Having a peak sensitivity at a wavelength shorter than 300 nanometers and having an efficiency of less than 0.1% relative to peak response at wavelengths longer than 400 nanometers;

NOTE: Paragraph (a) of this ECCN 1548A does not control vacuum photodiodes specially designed for use in spectrophotometry having a peak response at a wavelength shorter than 300 nm.

(b) Semiconductor photodiodes and phototransistors with a response "time constant" of 95 ns or less measured at the operating temperature for which the "time constant" reaches a minimum, *except* semiconductor photodiodes that are not "space qualified" with a response "time constant" of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,050 nm nor shorter than 300 nm;

(c) Linear and focal-plane arrays (hybrid or monolithic) having the characteristics in paragraph (a) or (b) of this ECCN 1548A, and specially designed components therefor;

(d) Those items controlled by this ECCN 1548A that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant;

(For photomultiplier tubes that contain microchannel plates, see ECCN 1549A.)

NOTE: This ECCN 1548A does not control:

(a) Germanium photo devices with a peak sensitivity at a wavelength shorter than 1,750 nm;

(b) Infrared single or multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

(1) Lead sulphide;
(2) Triglycine sulphate and variants;
(3) Lead-lanthanum-zirconium titanate and variants;
(4) Lithium tantalate;
(5) Polyvinylidene fluoride and variants;
(6) Strontium barium niobate and variants; *or*
(7) Lead selenide;

(c) Single-element encapsulated mercury-cadmium-telluride (HgCdTe) uncooled (295 K ambient operating temperature) photoelectromagnetic (pem) or photoconductive (pc) mode photodetectors with a peak sensitivity at a wavelength shorter than 11,000 nm.

Definitions of Terms

Space qualified—

Products stated by the manufacturer as designed and tested to meet the special electrical, mechanical or environmental requirements for use in rockets, satellites or high-altitude flight systems operating at altitudes of 100 km or more.

Time constant—

The time taken from the application of a light stimulus for the current increment to reach a value of 1-1/e times the final value (i.e., 63% of the final value).

1549A Photomultiplier tubes.

Controls for ECCN 1549A

Unit: Report tubes, semi-conductor devices, and systems in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: See Part 773.

List of Photomultiplier Tubes Controlled by 1549A

Photomultiplier tubes of the following description: (a) They are solar blind types for which the long wavelength cutoff is below 350 nm, where the long wavelength cutoff is defined as 10% of the maximum sensitivity;

NOTE: Photomultiplier tubes specially designed for use in spectrophotometry having a peak sensitivity at a wavelength shorter than 300 nm are not controlled by this paragraph.

(b) An anode pulse rise time of less than 1 ns; *or*

(c) Containing microchannel plate electron multipliers; and

(For photosensitive components, see ECCN 1548A.)

(For microchannel plate electron multipliers, see ECCN 1556A.)

1553A Flash discharge type X-ray systems (including tubes) and specially designed parts and accessories therefor.

Controls for ECCN 1553A

Unit: Report tubes, semi-conductor devices, and systems in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

List of X-ray Systems Controlled by ECCN 1553A

Flash discharge type X-ray systems (including tubes) and specially designed parts and accessories therefor, having all of the following characteristics:

(a) Peak power greater than 500 MW;

(b) Output voltage greater than 500 kV; and

(c) Pulse width less than 0.2 microsecond.

1555A Electron tubes and specially designed components therefor.

Controls for ECCN 1555A

Unit: Report tubes, semi-conductors devices, and systems in "number"; parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security, nuclear non-proliferation. Nuclear non-proliferation controls do not apply to those countries listed in Supp. Nos. 2 or 3 to Part 773.

Special Licenses Available: A Distribution License is available for shipment of equipment defined in paragraphs (a) and (b) of the List below to countries listed in Supp. Nos. 2 or 3 Part 773. Other special licenses, as well as a Distribution License, may be available for other equipment in the List; see Part 773.

List of Equipment Controlled by ECCN 1555A

Electron tubes, as follows, and specially designed components therefor:

(a) Electron tubes for image conversion or intensification, including those designed for streak or framing cameras, incorporating:

(1) Microchannel-plate electron multipliers; *or*

(2) Semi-transparent photocathodes incorporating epitaxially grown layers of compound semiconductors, such as gallium arsenide;

(b) Electron tubes for television or video cameras, having any of the following characteristics:

(1) Incorporating microchannel-plate electron multipliers;

(2) Coupled with electron tubes covered by paragraph (a) of this ECCN;

(3) Ruggedized and having a maximum length-to-bulb diameter ratio of 5:1 or less.

NOTE: The image intensifiers, image converters and camera tubes defined in paragraph (a) of this ECCN above have significant military as well as commercial use and, as such, licensing jurisdiction is shared between the Office of Munitions Control (Department of State) and the Department of Commerce.

NOTE 1: This ECCN does not control commercial standard X-ray amplifier tubes.

NOTE 2: Nothing in this Note 2 permits the export of technical data for the equipment specified herein, *except* for the minimum required for its use (i.e., installation, operation and maintenance). This ECCN 1555A does not control:

(a) Non-imaging image intensifier or non-imaging image conversion tubes that incorporate microchannel-plate electron multipliers, when not specially designed for cameras controlled by ECCN 1585A;

(b) Television or video camera tubes that incorporate microchannel-plate electron multipliers designed for cameras not controlled by ECCN 1585A.

NOTE: Note 2 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

(ADVISORY) NOTE 3: (GFW Eligibility restricted to those Countries Listed in Supplement Nos. 2 or 3 to Part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of non-ruggedized tubes controlled by ECCN 1555A, provided that the tubes will be used for bona fide medical applications.

(ADVISORY) NOTE 4 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of electron tubes, as follows:

(a) Image intensifier or image conversion tubes that incorporate microchannel-plates, when not specially designed for cameras controlled by ECCN 1585A;

(b) Television and video camera tubes that incorporate microchannel-plate electron multipliers not controlled by ECCN 1556A.

NOTE: This Advisory Note does not apply to electron tubes incorporating a gallium arsenide (or similar semi-conductor) photocathode.

1556A Optical Elements and Elements for Optical Tubes.

Controls for ECCN 1556A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Optical Elements and Elements for Optical Tubes Controlled by ECCN 1556A

(a) Non-flexible fused fiber optic plates or bundles, having all of the following characteristics:

(1) A fiber pitch (center-to-center spacing) of less than 10 micrometers;

(2) A light-absorbing medium surrounding each fiber, or interstitially placed between fibers; and

(3) A diameter greater than 1/2 in. (13 mm); or

(b) Microchannel plates for electron image amplification having both of the following characteristics:

(1) 15,000 or more hollow tubes per plate; and

(2) Hole pitch (center-to-center spacing) of less than 25 micrometers;

(c) Semi-transparent photocathodes incorporating expitaxially grown layers of compound semiconductors, such as gallium arsenide (For associated starting materials, see ECCN 1757A.); and

(d) Diffractive type optical elements specially designed for display screens, with any of the following characteristics:

(1) A transmission of more than 90% outside the reflection band and a reflection of more than 75% inside the reflection band, having less than 15 nanometers bandwidth and matched to the frequency of the display light source;

(2) A rear projection screen brightness gain of more than 10 times the gain of a Lambertain scatterer with an equivalent area, and less than 10% variation in brightness across the exit aperture;

(3) Specially designed for use in helmet-mounted displays.

1558A Electronic vacuum tubes and cathodes, and other components specially designed for those tubes.

Controls For ECCN 1558A

Unit: Report tubes, semi-conductor devices, and systems in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Electronic Vacuum Tubes and Cathodes, and Other Components Specially Designed for These Tubes Controlled by ECCN 1558A

(a) Tubes in which space charge control is utilized as the primary functional parameter, including but not limited to triodes and tetrodes, of the following description:

(1) Tubes rated for continuous wave operation having either of the following characteristics:

(i) Above 4 GHz at maximum rated anode dissipation; or

(ii) Within the frequency range 0.3 to 4 GHz and for which, under any condition of cooling, the product of the maximum rated anode dissipation (expressed in kW) and the square of the maximum frequency (expressed in GHz) at the maximum rated anode dissipation is greater than 10, *except for tubes specially designed for television transmitters operating in the frequency range of 0.47 to 0.96 GHz and rated for operation without a grid current, for which the product of the rated anode dissipation (expressed in kW) and the square of the maximum frequency (expressed in GHz) may reach 20;*

(2) Tubes rated only for pulse operation having either of the following characteristics:

(i) Exceeding 1 GHz, with maximum peak pulse output power of more than 45 kW; *or*

(ii) Between 0.3 and 1 GHz and for which, under any condition of cooling, the product of the peak pulse output power (expressed in kW) and the square of the maximum frequency (expressed in GHz) is greater than 45;

(3) Tubes, specially designed for use as radar pulse modulators having a peak anode voltage rating of 100 kV or more, or rated for a peak pulse power of 20 MW or more (see also ECCN 1514A);

(b) Tubes that utilize interaction between a beam of electrons and microwave elements and in which the electrons travel in a direction perpendicular to the applied magnetic field, including but not limited to magnetrons, crossed-field amplifier tubes and crossed-field oscillator tubes, *except*

(1) *Fixed frequency and tunable pulsed magnetrons and crossed-field amplifier tubes that are in normal*

civil use in equipment that may be exported under the terms of the Commodity Control List, having the following characteristics:

(i) *Magnetrons designed to operate at frequencies below 3 GHz with a maximum rated peak output power of 5 MW or less, or between 3 to 12 GHz with the product of the maximum rated peak output power (expressed in kW) and the frequency (expressed in GHz) less than 4,200 and a "frequency tuning time" of more than 100 milliseconds;*

TECHNICAL NOTE: "Frequency tuning time" is the time required to change the operating frequency from a starting frequency, through the maximum frequency, through the minimum frequency, and return to the starting frequency, *i.e.*, one complete tuning cycle.

("Frequency tuning time": $T = \frac{1}{2f_o}$

[f_o: dither rate])

(ii) *Crossed-field amplifier tubes designed to operate at frequencies below 4 GHz with a maximum rated average output power of 1.2 kW or less, a bandwidth of 200 MHz or less and a gain of less than 15 dB;*

(2) Fixed frequency continuous wave magnetrons designed for medical use or for industrial heating or cooking purposes operating at a frequency of 2.375 GHz ±0.05 GHz or 2.45 GHz ±0.05 GHz with a maximum rated output power not exceeding 6 kW or, at a frequency lower than 1 GHz, with a maximum rated output power not exceeding 35 kW;

(c) Tubes that utilize the interaction between a beam of electrons and microwave elements or cavities and in which the electrons travel in a direction parallel to the applied magnetic field (e.g., klystrons or travelling wave tubes), *except:*

(1) *Continuous wave tubes, having all of the following characteristics:*

(i) *Designed for use in civil ground communication;*

(ii) Instantaneous bandwidth tubes with any of the following sets of characteristics:

(A) Tubes with:

(*1*) An instantaneous bandwidth of half an octave or less (i.e., the highest operating frequency does not exceed 1.5 times the lowest operating frequency); *and*

(*2*) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 0.3;

(B) Tubes that:

(*1*) Have an instantaneous bandwidth of 10% or less (i.e., the highest operating frequency does not exceed 1.1 times the lowest operating frequency);

(*2*) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 5; and

(*3*) Operate in standard international telecommunications bands; or

(C) Tubes that:

(*1*) Have an instantaneous bandwidth of 3% or less (i.e., the highest operating frequency does not exceed 1.03 times the lowest operating frequency);

(*2*) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 25; and

(*3*) Operate in standard international telecommunications bands;

(iii) *An operating frequency no higher than 20 GHz;*

(iv) No multiple grid, including shadow grid, electron guns; and

(v) *Collectors with no more than two depressed stages;*

(2) Pulsed tubes, having all of the following characteristics:

(i) For civil applications;

(ii) An instantaneous bandwidth of half an octave or less, *i.e.*, the highest operating frequency is not higher than 1.5 times the lowest operating frequency;

(iii) Collectors with no more than two depressed stages; *and*

(iv) Either of the following:

(A) A peak saturated output power not exceeding 1 kW, an average output power not exceeding 40 W and the operating frequency not exceeding 10 GHz; *or*

(B) A peak saturated output power not exceeding 100 W, an average output power not exceeding 20 W and the operating frequency between 10 and 20 GHz;

(3) Fixed frequency pulsed tubes, as follows:

(i) For civil applications;

(ii) Operating at frequencies below 3.5 GHz;

(iii) Having a peak output power of 1.6 Mw or less; *and*

(iv) Having an operating bandwidth of less than 1%;

(4) Tubes, as follows:

(i) Used as fixed frequency or voltage tunable oscillator tubes;

(ii) Designed to operate at frequencies below 20 GHz; *and*

(iii) Having a maximum output power of less than 3 W;

(d) Tubes which utilize interaction between an electron beam and microwave elements or cavities but do not require a magnetic field to control or focus the electron beam, *except low power reflex oscillator klystrons designed to operate at frequencies below 20 GHz and at a maximum output power of less than 3 watts;*

(e) Tubes utilizing interaction between a beam of electrons and microwave elements or cavities in which the electrons drift in a direction parallel to the applied magnetic field but also require for their operation a large component of velocity transverse to the direction of the applied magnetic field, including gyrotrons, ubitrons and peniotrons *except gyrotron oscillators;*

(f) Tubes designed to withstand on any axis an acceleration of short duration (shock) greater than 1,000 g;

(g) Tubes designed for operation in ambient temperatures exceeding 473K (200° C);

(h) Tubes of the types described in sub-paragraphs (c), (d) or (e) of this List designed to operate with no filament or cathode heating element (as indicated by the absence of heating supply connections);

(i) Tubes which utilize a modulated beam of electrons striking one or more semi-conductor diodes to provide power gain. (Also see ECCN 1544A.)

(j) Cathodes for electronic vacuum tubes, as follows:

(1) Specially designed for tubes controlled for export by paragraphs (a) to (i) of this ECCN; *or*

(2) Impregnated cathodes capable of producing a current density exceeding 0.5 A/cm² at rated operating conditions.

NOTE 1: Nothing in the following shall be construed as permitting the export of technical data for electronic vacuum tubes or specially designed components therefor (for manufacturing equipment, see ECCN 1355A(a)). This ECCN 1558A does not cover the following electronic vaccuum tubes and specially designed components therefor:

Tubes covered by paragraphs (a) and (c), specially designed for civil telecasting according to CCIR or OIR standards.

NOTE 2: Nothing in the following shall be construed as permitting the export of technical data. Paragraphs (b) and (c) of this ECCN 1558A do not control magnetrons and klystrons specially designed for particle accelerators for medical radiation therapy, having all of the following characteristics:

(a) Capable of operation only at a frequency of 3,000 MHz ±15 MHz or at a frequency of 2,856 MHz ±15 MHz;

(b) Not capable of being tuned mechanically or electronically outside the above bands;

(c` Mechanically tuned within the above bands; *and*

(d) Having a peak output power not exceeding 10 MW and having an average output power not exceeding 15 kW.

5559F Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction, and accessories therefor.

(Specify by name and type number.)

Controls for ECCN 5559F

Unit: Report tubes and semi-conductor devices in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $3,000 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to part 778; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 5559F

Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction having any of the characteristics, and accessories therefor:

(a) A peak pulse power output exceeding 20 MW;

(b) A peak anode voltage greater than 25 kV;

(c) A peak current rating greater than 1.5 kA.

NOTE: For thyratrons rated for both single-shot (crowbar) and modulator service, the figure for modulator service should be used.

1560A High energy storage capacitors.

Controls for ECCN 1560A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China, $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation. Nuclear non-proliferation controls apply only to Country Groups S and Z, Taiwan, and countries listed in supplement No. 4 to part 778 of this subchapter.

Special Licenses Available: See part 773 of this subchapter.

List of Capacitors Controlled by ECCN 1560A

(a) Capacitors with a repetition rate of less than 10 Hz (single shot slot capacitors) having all of the following characteristics:

(1) A voltage rating equal to or more than 5 kV;

(2) An energy density equal to or more than 250 J/kg; *and*

(3) A total energy equal to or more than 25 kJ;

(b) Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following characteristics:

(1) A voltage rating equal to or more than 5 kV;

(2) An energy density equal to or more than 50 J/kg;

(3) A total energy equal to or more than 100 J *and*;

(4) A charge/discharge cycle life equal to or more than 10,000.

NOTE 1. This ECCN 1560A does not control electrolytic or tantalum capacitors.

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by this ECCN 1560A for medical use.

1561A Materials specially designed for use as absorbers of electromagnetic waves.

Controls for ECCN 1561A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China, $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See part 773 of this subchapter.

List of Materials Controlled by ECCN 1561A

Materials specially designed for use as absorbers of electromagnetic waves having frequencies exceeding 2×10^{8} Hz and less than 3×10^{12} Hz, except materials as follows:

(a) Hair type absorbers, whether constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

(b) Absorbers whose incident surface is non-planer in shape, including pyramids, cones, wedges and convoluted surfaces, and that have no magnetic loss;

(c) Planar absorbers having all of the following characteristics:

(1) Made of:

(i) Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ± 15% on the center frequency of the incident energy and not capable of withstanding temperatures exceeding 450 K (177 °C); *or*

(ii) Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ± 15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527 °C);

(2) Their tensile strength is less than 7×10^6 N/m^2; *and*

(3) Their compressive strength is less than 14×10^6 N/m 10^2.

TECHNICAL NOTE: Absorption test samples for paragraphs (c)(1)(i) or (c)(1)(ii) of this ECCN 1561A should be a square at least 5 wavelengths (of enter frequency) on a side and positioned in the far field of the radiating element.

NOTE: Nothing in this ECCN 1561A releases magnetic materials to provide absorption when contained in paint.

1564A Integrated circuits, including packages therefor, "assemblies", "modules", and "substrates".

Controls for ECCN 1564A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security; foreign policy. Foreign policy controls apply to A-D converters described in paragraph (a)(6)(i) under the List for this ECCN 1564A when usable in systems described in § 776.18(a) of this subchapter and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c) of this subchapter). See part 773 of this subchapter for special licenses available for other commodities controlled under ECCN 1564A.

Technical Data: Export of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20) of this subchapter).

List of Equipment Controlled by ECCN 1564A

NOTES: 1. The control status of "assemblies", "modules", integrated circuits and "substrates" that are specially designed for or have the same functional characteristics as other equipment is determined by the control status of the other equipment.

NOTE: Integrated circuits described in paragraphs (a)(3) through (a)(12) of this ECCN 1564A are not considered to be specially designed and their control status is therefor determined by this ECCN 1564A.

2. This ECCN 1564A also controls "modules" that have performances and functions equivalent to those of the integrated circuits controlled by paragraph (a) of the List of this ECCN 1564A.

3. Integrated circuits include the following types:

"Monolithic integrated circuits";
"Hybrid integrated circuits," including "multichip integrated circuits";
"Film type integrated circuits," including silicon-on-sapphire integrated circuits or equivalents;
"Optical integrated circuits."

(a) Integrated circuits, as follows:

(1) Designed or rated as radiation hardened;

(2) Rated for operation at an ambient temperature below 219 K (−54 °C) or above 397 K (+124 °C);

NOTE: For audio amplifier or voltage regulator integrated circuits, or integrated circuits for medical electronic prostheses or car and train engine electronics, the temperature limits do not apply.

(3) Silicon-based "micro processor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having any of the following characteristics:

(i) An external data bus width of more than 16 bit or an arithmetic logic unit with an access width of more than 32 bit;

(ii) A maximum clock frequency of more than 20 MHz; *or*

(iii) On chip random access storage (RAM) of more than 512 Bytes;

TECHNICAL NOTE: "Microprocessor microcircuits" include Digital Signal Processors (DSP) and Floating Processor Units (FPU).

NOTE: This ECCN 1564A does not control silicon-based "microcomputer microcircuits" or microcontroller microcircuits having an operand (data) word length of 8 bit or less.

(4) Silicon-based peripheral integrated circuits specially designed to sup-

port integrated circuits controlled by paragraph (a)(3) of this ECCN 1564A;

(5) Silicon-based storage integrated circuits, as follows:

(i) Programmable read only memories (PROMs) (fusible link or avalanche breakdown) having a storage capacity of more than 128 Kbits per package;

NOTE: PROMs programmed by the supplier are to be treated as ROMs.

(ii) Electrically erasable programmable read only memories (EEPROMs), or electrically alterable read only memories (EAROMs), having a storage capacity of more than 64 Kbits per package;

(iii) Ultra-violet erasable programmable read only memories (UV-EPROMs) having a storage capacity of more than 256 Kbits per package;

NOTE: Unprogrammable one-time programmable read-only memories (OTP ROMs) that use the same technology as UV-EPROMs for their semiconductor chips, but have no optical window for ultra-violet irradiation, are controlled by this ECCN 1564A.

(iv) Dynamic random access memories (DRAMs) having a storage capacity exceeding either of the following:

(A) 1 Mbit per package; *or*

(B) 256 Kbits per package if they have a maximum access time of less than 80 ns;

(v) Static random-access memories (SRAMs) having a storage capacity exceeding either of the following:

(A) 256 Kbits per package; *or*

(B) 64 Kbits per package if they have a maximum access time of less than 80 ns;

NOTE: For read-only memories (ROMs) or preprogrammed, non-reprogrammable integrated circuits containing:

(a) "Software", see supplement No. 3 to part 779 of this subchapter;

(b) "Specially designed software", see supplement Nos. 3 and 4 to part 779 of this subchapter;

(c) Technical data, see part 779 of this subchapter or the appropriate ECCN on the CCL.

(6) Converter integrated circuits, as follows:

(i) Analog-to-digital converters having either of the following characteristics:

(A) A resolution of 12 bits with a conversion time of less than 500 ns; or

(B) A resolution of more than 12 bits with a conversion time of less than 5 microseconds;

NOTE: Paragraph (a)(6)(i) of ECCN 1564A does not control an analog-to-digital converter designed for digital voltmeters that themselves are not controlled by ECCN 1529A.

(ii) Digital-to-analog converters having either of the following characteristics:

(A) A resolution of 12 bits with a maximum "settling time" to rated linearity of less than:

(*1*) 500 ns for voltage output converters; *or*

(*2*) 25 ns for current output converters; *or*

(B) A resolution of more than 12 bits, with a maximum "settling time" to rated linearity of less than:

(*1*) 3 microseconds for voltage output converters; *or*

(*2*) 1 microsecond for current output converters;

(7) "Optical integrated circuits" having any of the following characteristics:

(i) Containing more than 2,048 elements;

(ii) Having a peak sensitivity at a wave length longer than 1,200 nm or shorter than 190 nm;

(iii) Having a peak sensitivity at a wavelength shorter than 300 nm and having an efficiency of less than 0.1 percent relative to peak response at wave lengths longer than 400 nm;

(iv) Having a response "time constant" of 95 ns or less measured at the operating temperature for which the "time constant" reaches a minimum; *or*

NOTE: Paragraph (a)(7) of this ECCN 1564A does not control "optical integrated circuits" that are not "space qualified" and that have both of the following characteristics:

(a) A response "time constant" of 0.5 ns or more; *and*

(b) A peak sensitivity at a wavelength neither longer than 1,050 nm nor shorter than 300 nm;

(v) Containing semiconductor "lasers" controlled by ECCN 1522A;

(8) Sample-and-hold integrated circuits having an acquisition time of less than 500 ns;

(9) Unprogrammed, silicon-based, programmable gate arrays or logic arrays having both of the following characteristics:

(i) More than 28 terminals; *and*

(ii) An equivalent gate count of more than 200 per package;

(10) Fuzzy logic or neural network integrated circuits;

(11) Integrated circuits designed for Integrated Services Digital Network (ISDN) functions:

TECHNICAL NOTE: For the purposes of paragraph (a)(11) of this ECCN 1564A, "designed" means that the integrated circuit was manufactured for the specific purpose of providing ISDN functions. (For those integrated circuits that provide ISDN functions but that are specially designed for equipment described in other ECCNs, see the appropriate ECCN.

(12) Unfinished wafers;

NOTE: The control status of unfinished wafers with a defined pattern, in which the function has been determined, is to be evaluated against the parameters of paragraph (a) of this ECCN.

(13) Integrated circuits, other than those described in paragraphs (a)(1) through (a)(12) of this ECCN 1564A, having any of the following characteristics:

(i) Based upon any compound semiconductor;

NOTE: Paragraph (a)(13)(i) of this ECCN 1564A does not control compound semiconductor integrated circuits that are designed for, and by virtue of circuit design limited to use in, any of the following applications:

(a) Civil audio, radio or TV equipment operating below 1 GHz; *or*

(b) Mobile telephone and cordless telephone equipment operating below 1 GHz.

(ii) Mixed-signal integrated circuits (combining analog and digital functions) that can operate above 1.2 GHz or that have a typical "basic gate propagation delay time" of less than 1 ns;

(iii) Digital (logic) integrated circuits having a typical "basic gate propagation delay time" of less than 1 ns; *or*

NOTE: Paragraph (a)(13)(iii) of this ECCN 1564A does not control silicon-based digital (logic) integrated circuits with 28 terminals or less.

(iv) Having more than 128 terminals.

(b) Ceramic packages for integrated circuits designed for hermetically sealed pin or pad grid array, leadless carrier or surface-mounted configurations, having either of the following characteristics:

(1) Pin, pad or lead nominal spacings of less than 1.25 mm (50 mil); *or*

(2) More than 68 terminals;

(c) Ceramic "substrates", having more than three layers of interconnections not including the ground plane.

NOTE 1: Nothing in this ECCN permits the export of technical data for the design, development or processing of wafers or chips for any controlled type of integrated circuits, irrespective of any release or transfer of certain devices that are specially designed for or that have the same functional characteristics as other equipment, as described in Note 1 that precedes paragraph (a) of this ECCN 1564A. This restriction also applies to technical data embodied both in the equipment controlled by ECCN 1355A and its use.

NOTE 2: This ECCN 1564A does not control integrated circuits described in paragraphs (a)(9) or (a)(13) of this ECCN, or microcontroller micro circuits or "microcomputer microcircuits" described in paragraph (a)(3) of this ECCN, provided that:

(a) They have no "user-accessible microprogrammability";

(b) They are for an identifiable civil application and substantially restricted to that application;

(c) The design or "program" are originated either by the "manufacturer" alone or in concert with the user of the integrated circuit;

(d) The "manufacturer" has established that the design or program are fixed at the time of manufacture; and

(e) The "manufacturer" has established that the design, basic functions and performance of the integrated circuit are only for the intended civil end-use.

NOTE: This Note 2 for ECCN 1564A does not release from control integrated circuits that satisfy the conditions of Note 2, but that are specially designed components for controlled equipment.

NOTE 3: This ECCN 1564A does not control silicon based integrated circuits provided that:

(a) They have no "user-accessible microprogrammability";

(b) The design or "program" are originated either by the "manufacturer" alone or in concert with the user of the integrated circuit;

(c) The "manufacturer" has established that the design or program are fixed at the time of manufacture;

(d) The "manufacturer" has established that the design, basic functions and performance of the integrated circuit are only for the intended civil end-use; *and*

(e) They are designed or programmed by the "manufacturer" for any of the following applications only:

(1) Car electronics (e.g., entertainment, instrumentation, safety, comfort, operations or pollution);

(2) Home electronics (e.g., audio and video equipment, appliances, safety, education, comfort, remote controlled toys or amusement);

(3) Timekeeping applications (e.g., watches or clocks);

(4) Personal communications up to 150 MHz, including amateur radio communication and intercom;

(5) Uncontrolled cameras including cine cameras, but excluding imaging microcircuits;

(6) Medical electronic prostheses (e.g., cardiac pacemakers, hearing aids); *or*

(7) Civil telephone subscriber sets providing neither ISDN functions nor encryption.

NOTE: Integrated circuits specially designed for mobile (radio) telephone that use frequency synthesizers are specially designed components controlled by ECCN 1531A.

(ADVISORY) NOTE 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of devices (encapsulated or unencapsulated) controlled by paragraph (a) of ECCN 1564A, provided that:

(a) They have been designed for identifiable civil applications; *and*

(b) They are, by nature of design or performance, substantially restricted to the particular application for which they have been designed.

4564B Analog-to-digital converters.

Controls for ECCN 4564B

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply to A-D converters described in the List below when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None.

List of Analog-to-Digital Converters Controlled by ECCN 4564B

Analog-to-digital converters not controlled by ECCN 1564A that:

(a) Have both of the following characteristics:

(1) A maximum conversion rate to rated accuracy of more than 50,000 complete conversions per second, i.e., a conversion time to maximum resolution of less than 20 microseconds; *and*

(2) An accuracy of better than ± 0.025% of full scale over the specified operating temperature range; *and*

(b) Have one or more of the following characteristics:

(1) Rated for continuous operation at temperatures from below −45 °C to above 55 °C; *or*

(2) Designed to meet military specifications for ruggedized equipment, or modified for military end-use; *or*

(3) Designed for radiation resistance.

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers, and technical data therefor; and specially designed components for these electronic computers and "related equipment".

NOTE: For "specially designed software", see supp. No. 3 to part 779.

Controls for ECCN 1565A

Unit: Report computers and peripherals in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Technical Data and Software: Technical data related to items controlled by this ECCN is described in paragraph (j). GTDR with written assurance is available for Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations. Software related to equipment in this ECCN 1565A is controlled by Supplement No. 3 to Part 779. A validated license is required for technical data, including software, for the design and production of commodities that are controlled for nuclear weapons delivery reasons (see § 779.4(d) and supp. No. 4 to part 779 of this subchapter).

Commodities Not Eligible for General License GCT: Electronic computers and related equipment, as follows:

(1) Digital computers and related equipment controlled by paragraph (h) that have a total processing data rate exceeding 2,000 million bits per second.

(2) Analog computers, equipment or systems containing analog computers, and digital computers that contain the design features described in paragraphs (a), (b), (f), and (g).

(3) Analog and hybrid computers, controlled by paragraphs (c) and (d), and (h) as applicable to (d), when combined with specially designed software for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 776.18(a) of this subchapter.

(4) Digital computers used as ancillary equipment for test facilities and equipment that are controlled by ECCNs 1361A and 1362A for nuclear weapons delivery non-proliferation purposes.

Processing Code: CS.

Reason for Control: National security; foreign policy; nuclear non-proliferation. Foreign policy controls include nuclear weapons delivery non-proliferation controls on: 1. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c), (d), and (h) as applicable to (d), under the List below. Controls apply when these computers are combined with specially designed software, for modeling, simulation, or design integration of the following: complete rocket systems and unmanned air vehicle systems described in § 776.18(a); 2. analog or digital computers and related equipment that contain design features as described in paragraphs (a), (b), and (f) under the List below; and 3. digital computers used as ancillary equipment for test facilities and equipment that are controlled by ECCNs 1361A and 1362A for nuclear weapons delivery non-proliferation purposes.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c) of this subchapter). Under the Distribution License procedure, any electronic computers, except supercomputers (or any device, apparatus, or accessory that upgrades an electronic computer to become a supercomputer), may be exported to approved destinations listed in supp. Nos. 2 or 8 to part 773 of this subchapter. Electronic computers having a total processing data rate of 2,000 million bits per second or less may be exported under the Distribution License procedure to approved destinations listed in Supplement No. 3 to part 773 of this subchapter. Electronic computers having a total processing data rate of 1,000 million bits per second or less may be exported under the Distribution License procedure to approved destinations other than those listed in Supplement Nos. 2, 3, or 8 to part 773 of this subchapter, *except that* the total processing data rate may not exceed 275 million bits per second for Argentina, Brazil, India, Iraq, Israel, Pakistan, and the Republic of South Africa. The Service Supply License procedure may be used to service electronic computers that do not exceed the limits for the specific destinations listed above as eligible for the Distribution License.

GFW Eligibility: Commodities that meet technical specifications described in Advisory Notes 5, 7, or 9 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c). With regard to Advisory Note 9, the limitations imposed by paragraphs (a)(3), (b)(5)(i) and (b)(5)(iii), (b)(6)(iii), (b)(7)(iv), (b)(7)(v), and (b)(7)(vi), (b)(8)(i), (b)(9), and (c) are waived. However, Winchester disk drives exceeding a capacity of 130 Mbytes ARE EXCLUDED from GFW eligibility.

Special Foreign Policy Controls: Foreign Policy Controls apply to exports of computerized fingerprint equipment controlled by ECCN 1565A to all foreign destinations except Australia, Japan, New Zealand, and members of NATO.

Special South Africa Controls: Foreign policy export controls apply to exports to or for use by or for government consignees in the Republic of South Africa. See § 785.4(a)(9).

Nuclear Non-Proliferation Controls: See § 799.2, Interpretation No. 1.

NOTE: Refer to § 776.10 of the Regulations for specific information required to be filed with applications for QWY destinations and the People's Republic of China (PRC). For all destinations other than QWY countries or PRC, follow general application instructions and, in addition, indicate in the commodity description column on Forms ITA-622P and ITA-699P the "processing data rate." Section 776.10 of the Regulations provides the formula for calculating that rate.

TECHNICAL NOTES: 1. Electronic computers and "related equipment" are categorized as follows:

"Analog computer"—

Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; *and*

(c) Provide output of data.

"Digital computer"—

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; *and*

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"Hybrid computer"—

Equipment that can:

(a) Accept data;

(b) Process data, in both analog and digital representations; *and*

(c) Provide output of data.

"Related equipment"—

Equipment "embedded" in, "incorporated" in, or "associated" with electronic computers, as follows:

(a) Equipment for interconnecting "analog computers" with "digital computers";

(b) Equipment for interconnecting "digital computers";

(c) Equipment for interfacing electronic computers to "local area networks" or to "wide area networks";

(d) Communication control units;

(e) Other input/output (I/O) control units;

(f) Recording or reproducing equipment referred to ECCN 1565A by ECCN 1572A;

(g) Displays; *or*

(h) Other peripheral equipment.

NOTE: "Related equipment" containing an "embedded" or "incorporated" electronic computer, but lacking "user-accessible programmability", does not thereby fall within the definition of an electronic computer.

2. This ECCN 1565A includes:

(a) "Assemblies", "modules" or printed circuit boards with mounted components referred to this ECCN 1565A by ECCN 1564A;

(b) Central processing unit—"main storage" combinations;

(c) Processors for stored program control.

(For a complete list of definitions of terms used in this ECCN 1565A, see the "Definitions of Terms" section at the end of the entry.)

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A

(a) "Analog computers" and "related equipment" therefor, designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below 228 K (−45 °C) to above 328 K (+55 °C);

(b) Equipment or systems containing "analog computers" controlled by paragraph (a);

(c) "Analog computers" and "related equipment" therefor, other than those controlled by paragraph (a), *except:*

(1) Those which neither:

(i) Are capable of containing more than 20 summers, integrators, multipliers or function generators; *nor*

(ii) Have facilities for readily varying the interconnections of such components; *or*

(2) Those which are limited as follows:

(i)They use neither:

(A) Optical computation devices; *nor*

(B) Acoustic wave devices controlled by ECCN 1586A other than those exportable as an administrative exception pursuant to (Advisory) Note 1 to ECCN 1586A;

(ii) The rated errors for summers, inverters and integrators are not less than:

(A) Static: 0.01%

(B) Total at 1 kHz: 0.15%

(iii) The rated errors for multipliers are not less than:

(A) Static: 0.025%;

(B) Total at 1 kHz: 0.25%;

(iv) The rated errors for fixed function generators (log and sine/cosine) are not less than:

(A) Static: 0.1%;

(v) No more than 350 operational amplifiers; *and*

(vi) No more than four integrator time scales switchable during one program.

TECHNICAL NOTES: 1. The percentage for sub-paragraph (c)(2)(ii)(A) above applies to the actual output voltage; all the other percentages apply to full scale, that is from maximum negative to maximum positive reference voltages.

2. Total errors at 1kHz for sub-paragraph (c)(2)(ii)(B) and (c)(2)(iii)(B) above are to be measured with those resistors incorporated in the inverter, summer or integrator which provide the least error.

3. Total error measurements include all errors of the unit resulting from, for example, tolerances of resistors and capacitors, tolerances of input and output impedances of amplifiers, the effects of loading, the effects of phase shift or the generating of functions.

(d) "Hybrid computers" and "related equipment" therefor, with all the following characteristics:

(1) The analog section is controlled by paragraph (c);

(2) The digital section has an internal fixed or alterable storage of more than 2,048 bits; *and*

(3) Facilities are included for processing numerical data from the analog section in the digital section or vice versa;

(e) "Digital computers" or controlled "analog computers" containing equipment for interconnecting "analog computers" with "digital computers";

(f) "Digital computers" and "related equipment" therefor, with any of the following characteristics:

(1) Designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below 228 K (−45 °C) to above 328 K (+55 °C);

(2) Designed or modified to limit electromagnetic radiation to levels much less than those required by government civil interference specifications;

(3) Designed as ruggedized or radiation hardened equipment and capable of meeting military specifications for ruggedized or radiation hardened equipment;

(4) Modified for military use; *or*

(5) Designed or modified for certifiable multi-level security or certifiable user isolation applicable to government classified material or to applications requiring an equivalent level of security;

(g) Equipment or systems containing "digital computers" controlled by paragraph (f);

(h) "Digital computers" and "related equipment" therefor, other than those controlled by paragraphs (e) or (f), even when contained in or "associated" with equipment or systems:

NOTES: 1. The control status of these "digital computers" or "related equipment" is governed by the appropriate ECCN, provided that:

(a) The "digital computers" or the "related equipment" are essential for the operation of the other equipment or systems;

(b) The "digital computers" or the "related equipment" are not a "principal element" of the other equipment or systems; *and*

(c) The technical data for the "digital computers" and "related equipment" is governed by paragraph (j) of this ECCN 1565A;

2. "Digital computers" or "related equipment" are not controlled by this ECCN 1565A, provided that:

(a) They are essential for medical applications;

(b) The equipment is substantially restricted to medical applications by the nature of its design and performance;

(c) The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

(d) The equipment for "signal processing", "image enhancement" or "multi-data-stream processing":

(1) Is essential for the medical application; *and*

(2) Is designed or modified for the identifiable and dedicated medical application.

(e) Any "digital computer" that is not designed or modified but essential for the medical application does not exceed a "total processing data rate" of 550 million bit per second; *and*

(f) The technical data for the "digital computers" or "related equipment" is governed by paragraph (j) of this ECCN 1565A.

(1) Including "digital computers" and "related equipment," as follows:

(i) Designed or modified for:

Note: "Digital computers" and "related equipment" containing equipment, devices or logic control for the following functions are also included.

(A) "Signal processing";

(B) "Image enhancement";

(C) "Local area networks";

Note: For the purpose of this paragraph, data communication systems when located within a single piece of equipment (e.g., television set, car) are not considered to be designed or modified for "local area networks."

(D) "Multi-data-stream processing";

Note: For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "multi-data-stream processing," if they:

(a) Utilize staged (pipelined) instruction interpretation for conventional single instruction-single data sequence processing; *or*

(b) Have an arithmetic unit implemented with bit-slice microprocessor microcircuits.

(E) Combined recognition, understanding and interpretation of image, continuous (connected) speech or connected word text other than "signal processing" or "image enhancement" described in paragraph (h)(1)(i) (A) or (B);

(F) "Real time processing" of sensor data:

(*1*) Concerning events occurring outside the "computer using facility"; *and*

(*2*) Provided by equipment controlled by ECCN 1501A, 1502A, or 1510A;

Note: This does not include digital radar signal processing by equipment that is:

(a) Controlled by ECCN 1501(c)(2)(vi) only, for which the conditions of ECCN 1501 apply; *or*

(b) Freed from control by the two-year limit of ECCN 1501(c)(2)(vii).

(G) [Reserved]

(H) "Fault tolerance";

Note: For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "fault tolerance," if they utilize:

(a) Error detection or correction algorithms in "main storage";

(b) The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

(c) The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

(d) The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

(I) Reserved;

(J) "User-accessible microprogrammability";

Note: For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "user-accessible microprogrammability," if this facility is limited to:

(a) Loading, reloading or inserting of "microprograms" provided by the supplier; *or*

(b) Simple loading of "microprograms", which may or may not be provided by the supplier, but that are neither designed to be accessible to the user nor accompanied by training or "software" for user accessibility.

(K)—(L) [Reserved]

(M) "Wide area networks";

(ii) "Related equipment", as follows:

Note: "Related equipment" not described in this paragraph (h)(1)(ii) or in paragraph (h)(1)(i) is not controlled by this ECCN 1565A.

(A) Disk drives for rigid magnetic media (hard disks) or non-rigid media (floppy disks), including cartridge type magnetic disk media, exceeding any of the following limits:

(*1*) A "gross capacity" of 165 MByte;

(*2*) "Maximum bit transfer rate":

(*i*) For disk drives for rigid magnetic media (hard disks)—10.3 million bit/s;

(*ii*) For disk drives for non-rigid media (floppy disks) or cartridge type magnetic disk drives—16 million bit/s;

(*3*) An access rate of 56 accesses per second;

(B) Disk drives for optical media (write-once-read multiple-times (WORM) disks) exceeding any of the following limits:

(*1*) A "net capacity" of 3.2 GByte;

(2) “Maximum bit transfer rate” of 8 million bit/s;

(3) An access rate of 15 accesses per second;

(C) Disk drives for erasable optical or magneto-optical media;

(D) Solid state storage equipment other than “main storage” (also known as solid state disks or RAM disks) exceeding a “net capacity” of 2 MByte;

(E) Input/output control units, designed for use with equipment controlled by paragraphs (h)(1)(ii)(A), (h)(1)(ii)(B), (h)(1)(ii)(C), or (h)(1)(ii)(D) of this ECCN 1565A, having any of the following characteristics:

(1) More than one independent read/write channel;

(2) “User-accessible programmability” or “user-accessible microprogrammability”; *or*

(3) A transfer rate exceeding 16 million bit/s;

NOTE: Assuming a configuration of disk drives that would maximize the transfer rate.

(F) Magnetic tape drives exceeding either of the following limits:

(1) A “maximum bit packing density” of 246 bit/mm; *or*

(2) A “maximum bit transfer rate” of 10 million bit/s;

(G) Streamer tape drives with a “maximum bit transfer rate” exceeding 16 million bit/s;

(H) Input/output control units, designed for use with tape drives controlled by paragraphs (h)(1)(ii)(F) or (h)(1)(ii)(G) of this ECCN 1565A, having any of the following characteristics:

(1) More than one independent read/write channel;

(2) “User-accessible programmability” or “user-accessible microprogrammability”; *or*

(3) A transfer rate exceeding 16 million bit/s;

NOTE: Assuming a configuration of tape drives that would maximize the transfer rate.

(I) Communication control units—directly connected data channel combinations exceeding a “total transfer rate” of 3.6 million bit/s;

(J) Communication control unit—“communication channel” combinations having a maximum “data signalling rate” of any “communication channel” exceeding 9,600 bit/s;

(K) Displays or monitors having more than 1,280 resolvable elements in one dimension and 1,024 resolvable elements in the perpendicular dimension with a maximum of 256 colors or shades of gray;

NOTES: 1. This paragraph (h)(1)(ii)(K) does not control displays or monitors not specially designed for electronic computers.

2. This paragraph (h)(1)(ii)(K) does not control monochrome displays for systems specially designed for and limited to graphic arts, desktop publishing, document image publishing (e.g., printing, publishing) that have displays not exceeding 1,600 resolvable elements in one dimension and 1,200 resolvable elements in the perpendicular dimension.

3. The color or shades of gray limits in paragraph (h)(1)(ii)(K) do not apply in the case of direct driven video monitors.

(L) Graphic accelerators or graphic coprocessors;

(2) *Except:*

(i)—(ii) [Reserved]

(iii) “Digital computers” other than those described in paragraphs (h)(1)(i)(D) to (h)(1)(i)(M), and “related equipment”, having all the following characteristics:

(A) Shipped as complete systems;

(B) Designed and announced by the manufacturer for identifiable civil use;

(C) Not specially designed for any equipment controlled by any other ECCN on the Commodity Control List identified by the code letter “A,” by the International Traffic in Arms Regulations, or by 10 CFR Part 110, or by 10 CFR Part 810;

(D) “Total processing data rate” not exceeding 275 million bit/s;

(E) “Total connected capacity” of “main storage” not exceeding 32 MByte;

(F) Not including a microprocessor or microcomputer microcircuit with an external data bus width of more than 32 bit or an arithmetic logic unit with an access width of more than 32 bit;

(G) Not including controlled “related equipment” other than input/output control unit-magnetic disk drive (hard disk) combinations having:

(*1*) A total connected "net capacity" not exceeding 2 GByte;

(*2*) A "maximum bit transfer rate" of any disk drive not exceeding 20.6 million bit/s; *and*

(*3*) No more than five independent disk drives exceeding a "maximum bit transfer rate" of 16 million bit/s;

(H) Not having both of the following characteristics:

Note: This does not apply to workstations designed for and limited to graphic arts (e.g., printing, publishing).

(*1*) They are stand-alone graphics work stations designed or modified for the generation, transformation and display of two- or three-dimensional vectors; *and*

(*2*) They exceed either of the following limits:

(*i*) "Block move data rate"—3 million pixels per second; *or*

(*ii*) Maximum bit transfer rate of the channel for direct access to the "main storage" (Direct Memory Access (DMA) channel)—15 million bit/s; *and*

(I) Not including equipment controlled by ECCN 1519A(a)(2) or by ECCN 1567A;

(iv) Graphic accelerators or graphic coprocessors with a "block move data rate" not exceeding 3 million pixels per second;

(v) Equipment for "signal processing" or "image enhancement" or both with an "equivalent multiply rate" not exceeding 6.5 million operations per second;

(vi) Equipment for "local area networks" that do not exceed a "data signalling rate" of 20 million bit/s and that have no "internetwork gateways".

Notes: 1. This paragraph (h)(2)(vi) does not control equipment specially designed for connecting "local area networks" within a "computer using facility".

2. For the controlled status of "software" for "local area networks", see paragraph (a)(3)(ii) in Supplement No. 3 to Part 779.

(i) [Reserved]

(j) Technical Data, as follows:

(1) Technical data applicable to the:

(i) Development, production or use (i.e., installation, operation and maintenance) of electronic computers or "related equipment", even if these electronic computers or "related equipment" are not controlled by this entry; *except:*

(A) Technical data that is unique to "related equipment" not otherwise controlled by any entry on the Commodity Control List identified by the code letter "A";

(B) The minimum technical information necessary for the use of electronic computers or "related equipment" free from control or authorized for export when shipped together with or solely for use with these electronic computers or "related equipment'; *or*

(C) The minimum technical information, as follows, for the production of electronic computers and "related equipment" excepted from control by paragraph (h)(2)(iii) or not controlled by paragraph (h)(1):

(*1*) "Assembling" of prefabricated components or sub-assemblies;

(*2*) Loading of basic diagnostic software; *and*

(*3*) Performing basic go/no go testing of finished products;

Notes: 1. "Assembling" is defined as the testing, and integrating into finished products, of components and sub-assemblies, including mounting components on to printed circuit boards or into other assemblies.

2. This paragraph (j)(1)(i)(C) does not permit the export of technical data or products controlled by other "A" level entries in the Commodity Control List.

(ii) Development, production or use of equipment or systems controlled by paragraphs (b) or (g) in the ECCN 1565A; *or*

(2) Technical data for the integration of:

(i) Controlled electronic computers or controlled "related equipment" into other equipment or systems whether or not the other equipment or systems are embargoed; *or*

Note: Nothing in the above controls technical data for integration that is unique to the other equipment or systems if they are free from control.

(ii) Non-controlled electronic computers or non-controlled "related equipment" into controlled equipment or systems.

Advisory Notes 1—8: [Reserved]

Advisory Note 9: (GFW eligibility available, except to those countries listed in Supplement No. 4 to part 778 of THIS SUB-

APTER. For the purposes of General Li- GFW, the following limitations im- ed by Advisory Note 9 are waived: 1. The plete systems restriction in paragraph of this ECCN 1565A; 2. The restriction equipment for "local area networks" in agraph (g)(4) of this ECCN as it applies "internetwork gateways"; and 3. The lim- ion on the "equivalent multiply rate" for nal processing" or "image enhance- " equipment imposed by paragraph (6) of this ECCN.) Licenses are likely to approved for export to satisfactory end- ers in Country Groups QWY of "digital puters" or "related equipment" therefor trolled by paragraph (h), provided that:

(a) They will be operated by civil end- for civil applications;

(b) They are exported as complete sys- , or as enhancements for previously ex- ted systems, provided that the enhanced tem does not exceed the limits of para- ph (g) of this Note;

(c) They have been primarily designed d used for non-strategic applications;

(d) They are not ruggedized above the el required for a normal commercial/civil ironment;

(e) They do not have any of the following racteristics identified in paragraphs)(1)(i)(D) to (h)(1)(i)(M);

(f) They do not have both of the following racteristics:

NOTE: This does not apply to workstations igned for and limited to graphic arts g., printing, publishing).

(1) They are stand-alone graphics work ations designed or modified for the gen- ation, transformation and display of two- r three-dimensional vectors; *and*

(2) They exceed either of the following its:

(i) "Block move data rate"—3 million ixels per second; *or*

(ii) Maximum bit transfer rate of the annel for direct access to the "main stor- e" (Direct Memory Access (DMA) chan- el)—15 million bit/s;

(g) They do not exceed any of the follow- g limits:

(1) Central processing unit—"main stor- e" combinations:

(i) "Total processing data rate"—550 mil- on bit/s;

(ii) "Total connected capacity" of "main orage"—64 MByte;

(2) Input/Output control unit—disk drive mbinations:

(i) Total connected "net capacity"—6 Byte;

(ii) "Maximum bit transfer rate" of any sk drive—25 million bit/s:

(3) Communication control unit—"commu- ication channel" combinations the maxi- um "data signalling rate" of which does ot exceed the limits in ECCN 1519A(a)(2);

(4) Equipment for "local area networks" that is not controlled by an "A" level entry on the Commodity Control List;

(5) Displays or monitors:

(i) Excepted from control; *or*

(ii) Monochrome displays for systems specially designed for and limited to graphic arts, desktop publishing, document image publishing (e.g., printing, publishing), not exceeding 4,800 resolvable elements in one dimension and 3,600 resolvable elements in the perpendicular dimension;

(6) Equipment for "signal processing" or "image enhancement" that is not controlled by an "A" level entry on the Commodity Control List.

ADVISORY NOTE 10: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "related equipment" for the enhancement of indigenously produced systems, provided that the enhanced system does not exceed the limitations of paragraphs (h)(2)(iii)(B) to (h)(2)(iii)(I) of this ECCN 1565A.

ADVISORY NOTE 11: [Reserved]

ADVISORY NOTE 12: (NOT ELIGIBLE FOR GENERAL LICENSES GFW AND G-COM) Licensees will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h) provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraph (h)(1)(i)(D) to (h)(1)(i)(M);

(2) Are exported as complete systems, or as enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Note;

(3) Have been designed and announced by the manufacturer for identifiable civil use;

(4) Are not ruggedized above the level required for a normal commercial/civil environment; *and*

(5) Do not have both of the following characteristics:

NOTE: This does not apply to workstations designed for and limited to graphic arts (e.g., printing, publishing).

(i) They are stand-alone graphics work stations designed or modified for the generation, transformation and display of two- or three-dimensional vectors; *and*

(ii) They exceed either of the following limits:

(A) "Block move data rate"—5 million pixels per second; *or*

(B) Maximum bit transfer rate of the channel for direct access to the "main storage" (Direct Memory Access (DMA) channel)—22 million bit/s;

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate—1000 million bit/s;

(ii) "Total connected capacity" of "main storage"—128 MByte;

(2) Input/Output control unit—disk drive combinations:

(i) Total connected "net capacity"—12 GByte;

(ii) "Maximum bit transfer rate" of any disk drive—25 million bit/s;

(3) Communication control unit—"communication channel" combinations the maximum "data signalling rate" of which does not exceed 19,200 bits/s;

(4) Communication control unit—"local area network" combinations: "data signalling rate" on the common transmission medium not exceeding 20 million bit/s;

(5) Displays or monitors:

(i) Displays or monitors having more than 1,280 resolvable elements in one dimension and 1,024 resolvable elements in the perpendicular dimension; *or*

(ii) Monochrome displays for systems specially designed for, and limited to, graphic arts, desktop publishing, document image publishing (e.g., printing, publishing), not exceeding 4,800 resolvable elements in one dimension and 3,600 resolvable elements in the perpendicular dimension;

(6) "Equivalent multiply rate" for "signal processing" or "image enhancement" equipment—8 million operations per second, provided the equipment does not have:

(i) "user-accessible microprogrammability"; *or*

(ii) "user-accessible programmability";

(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 12 shall be subject to the following restrictions:

(1) In all cases:

(i) A responsible representative of the end-user(s) or the importing agency must submit a signed statement describing the end-use and certifying that:

(A) The "digital computers" or "related equipment" will:

(*1*) Be used only for civil applications; *and*

(*2*) Not be reexported or otherwise disposed of without authorization from the Office of Export Licensing;

(B) Responsible Western representatives of the supplier will:

(*1*) Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*

(*2*) Be furnished information demonstrating continued authorized application of the equipment; *and*

(C) These Western representatives will b notified of any significant change of application or of other facts, on which the license was based;

(ii) A full description must be provided o

(A) The equipment; *and*

(B) Its intended application and workload

and

(iii) A complete identification of all end users and their activities must be provided

(2) [Reserved]

(3) There is no visitation requirement when the "total processing data rate" doe not exceed 550 million bit/s;

(4) When the parameters of the equipment exceed the limit in paragraph (c)(3) o this Note, the supplier will:

(i) Have a responsible Western representative visit and inspect the "computer usin facility" and all equipment, wherever located, at least quarterly for three years; *and*

(ii) Report periodically to the Office o Export Licensing whether the "digital computers" and "related equipment" therefo are still being used for the approved purposes at the authorized location.

NOTE: The visitation requirements of paragraph (c)(4) of Advisory Note 12 will b waived for remote "terminal devices" if they consist only of equipment free from contro

ADVISORY NOTES 13—14: [Reserved]

ADVISORY NOTE 15: (NOT ELIGIBLE FO GENERAL LICENSES GFW AND G-COM Licenses will receive favorable consideratio for export to satisfactory end-users in Country Groups QWY of instrumentation, tes equipment, components and "specially designed software" therefor, for the production of electronic computers or "relate equipment" excepted from control by paragraph (h)(2)(iii) or not controlled by paragraph (h)(1), provided that:

NOTES: 1. Nothing in this Note preclude the export of equipment free from control

2. Nothing in paragraphs (a) and (b) o this Note precludes the export of technica data authorized under other ECCNs in the Commodity Control List.

(a) The instrumentation, test equipment components and "specially designed software" is the minimum necessary to utiliz the technical data excepted from control b paragraph (j);

(b) Equipment for testing integrated circuits is limited to go/no-go tests;

(c) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment are not reexported or exported, either directly or indirectly, to another proscribed destination;

(2) The supplier may appoint a representative who is entitled to verify adherence to the licensing conditions;

(3) Modification is permitted only if this does not result in exceeding the technical performance limits or features allowed by this ECCN 1565A;

(4) The Western supplier's personnel have right of access to all the facilities involved in the production of the electronic computers or "related equipment".

ADVISORY NOTE 16: Licenses are likely to be approved for export to satisfactory end-users in Country Group QWY of "digital computers" and "related equipment" therefor controlled by paragraph (h), provided that all of the following conditions are met:

(a) The equipment is used for either:

(1) Monitoring or enhancing the safety of water-cooled or moderated civil nuclear reactors; *or*

NOTE: This sub-paragraph (a)(1) permits the export of training simulators designed for the specific nuclear power plant dealt with in the particular export request, but does not permit the export of any design or development information for the nuclear reactor.

(2) Monitoring or reducing releases from such reactors or plants into the environment;

(b) The "digital computers" and "related equipment" do not exceed the technical performance limits specified in (Advisory) Note 12 of this ECCN 1565A;

(c) A responsible western representative of the exporter will:

(1) Visit and inspect the "computer using facility" and all equipment, wherever located, at least quarterly for three years; *and*

(2) Report periodically to the Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location.

ADVISORY NOTE 17 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor controlled for export by paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Will be operated by civil end-users for civil applications;

(2) Are exported as complete systems or enhancements to previously exported systems up to the limits of paragraph (b) of this Advisory Note;

(3) Have been primarily designed and used for non-strategic applications; *and*

(4) Do not fall within the scope of both paragraphs (h)(1)(ii) (A) and (B);

(b) The "digital computers" or "related equipment" therefor do not exceed *any* of the following limits:

(1) Central processing unit—"main storage" combinations with a "total processing data rate" of 550 million bit/s; *or*

(2) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier transform of 1,024 complex points—40 ms;

(c) The "digital computers" or "related equipment" therefor do not have any of the following characteristics:

(1) Those identified in paragraphs (h)(1)(i)(D) to (H) or (M); *or*

(2) Those identified in paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

NOTE: [Reserved]

DEFINITIONS OF TERMS:

The following are definitions of terms used in ECCN 1565A:

Access Rate

(a) Of an input/output control unit—drum or disk drive combination (R_{ad})—

Either the "access rate" of an input/output control unit (R_{ac})or the sum of the individual "access rates" of all independent seek mechanisms (R_{sa}), whichever is smaller.

Thus: $R_{ad} = \min (R_{ac}; \text{SUM } R_{sa})$

(b) Of an input/output control unit (R_{ac})—

(1) With rotational position sensing (rps), the sum of the individual "access rate" of all independent seek mechanisms (R_{sa}) connected to the control unit.

Thus: $R_{ac} = \text{SUM } R_{sa}$ (with rps); *or*

(2) Without rotational position sensing (rps), the number (C) of independent read/write channels connected to the control unit divided by the least 'latency time' (t_{lmin}) of any connected independent seek mechanism.

$$\text{Thus: } R_{ac} = \frac{C}{t_{lmin}} \quad \text{(without rps)}$$

(c) Of a seek mechanism (R_{sa})—

The reciprocal of the average access time (t_{aa}) of the seek mechanism.

$$\text{Thus: } R_{sa} = \frac{1}{t_{aa}}$$

'Average Access Time' of a seek mechanism (t_{aa})—The sum of the 'average seek time' (t_{as}) and the 'latency time' (t_l).

Thus: $t_{aa} = t_{as} + t_l$

Average Seek Time (t_{sa})

The sum of the 'maximum seek time' (t_{smax}) and twice the 'minimum seek time' (t_{smin}), divided by three.

$$\text{Thus: } T_{sa} = \frac{t_{smax} + 2t_{smin}}{3}$$

Maximum Seek Time (t_{smax})

(1) For fixed head devices, it is zero; *or*

(2) For moving head or moving media devices, the rated time to move between the two most widely separated tracks.

Minimum Seek Time (t_{smin})

(1) For fixed head devices, it is zero; *or*

I21(2) For moving head or moving media devices, the rated time to move from one track to an adjacent track.

Latency Time (t_l)

The rotational period divided by twice the number of independent read/write heads per track.

Analog Computer

Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; *and*

(c) Provide output of data.

'Associated' with Equipment or Systems

(a) Can feasibly be either:

(1) Removed from such equipment or systems; *or*

(2) Used for other purposes; *and*

(b) Is not essential to the operation of such equipment or systems.

"Block Move Data Rate"—

The maximum number of pixels that can be moved per second from one location to another in the storage that functions as the frame buffer.

Communication Channel

The transmission path or circuit including the terminating transmission and receiving equipment (modems) for transferring digital information between distant locations.

Computer Operating Area

The immediate contiguous and accessible area around the electronic computer, where the normal operating, support and service functions take place.

Computer Using Facility

The end-user's contiguous and accessible facilities:

(a) Housing the "computer operating area" and those end-user functions that are being supported by the stated application of the electronic computer and its "related equipment"; *and*

(b) Not extending beyond 1,500 meters in any direction from the center of the "computer operating area".

Cumulative Total Processing Data Rate

The sum of all "total processing data rates" in a given transaction.

Data Device

Equipment capable of transmitting or receiving sequences of digital information.

Data (Message) Switching

The technique, including but not limited to store-and-forward or packet switching, for:

(a) Accepting data groups (including message, packets, or other digital or telegraphic information groups that are transmitted as a composite whole);

(b) Storing (buffering) data groups as necessary;

(c) Processing part or all of the data groups, as necessary, for the purpose of:

(1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling);

(2) Transmission; *or*

(3) Multiplexing; *and*

(d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

Data Signalling Rate

The rate as defined in ITU Recommendation 53-36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Binary digits for coding, checking, and synchronisation function are included.

NOTE: It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

Digital Computer

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; *and*

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

Embedded' in Equipment or Systems

Can feasibly be neither:

(1) Removed from such equipment or systems; nor

(2) Used for other purposes.

Equivalent Multiply Rate

The maximally achievable number of multiplication operations that can be performed per second considering that, in the case of simultaneous multiplication operations, all multiplication rates have to be summed in order to arrive at the "equivalent multiply rate":

(a) Assuming

(1) Optimal operand locations in the "most immediate storage"; *and*

(2) Operand lengths at least 16 bit, or more if this allows for faster operation; *and*

(b) Neglecting

(1) Set-up operations;

(2) Pipeline filling operations;

(3) Initialization;

(4) Interrupts; *and*

(5) Data reordering times.

NOTE: Simultaneous multiplication operations can occur because of:

(a) Multiple arithmetic units for operations such as complex multiplication, convolution or recursive filtering;

(b) Parallel pipelining;

(c) More than one arithmetic unit in one data processing unit; *or*

(d) More than one data processing unit in one system.

Fault Tolerance

The capability to perform correctly without human intervention after failure of any 'assembly', so that there is no single point in the system the failure of which could cause catastrophic failure of the system's functioning.

Assembly

A number of components (i.e., circuit elements, discrete components, microcircuits) connected together to perform a specific function or functions, replaceable as an entity (and normally capable of being disassembled).

Firmware

See Microprogram

Gateway

The function, realized by any combination of equipment and "software", to carry out the conversion of conventions for representing, processing or communicating information used in one system into the corresponding but different conventions used in another system.

Gross Capacity

The product of:

(a) The maximum number of binary digit (bit) positions per unformatted track; *and*

(b) The total number of tracks including spare tracks and tracks not accessible to the user.

Hybrid Computer

Equipment that can:

(a) Accept data;

(b) Process data, in both analog and digital representations; *and*

(c) Provide output of data.

Image Digitizer

A device for directly converting an analog representation of an image into a digital representation.

Image Enhancement

The processing of externally derived information-bearing images by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., Fast Fourier Transform or Walsh Transform). This does not include algorithms using only linear or rotational transformation of a single image, such as translation, feature extraction, registration or false coloration.

'Incorporated' in Equipment or Systems

(a) Can feasibly be either:

(1) Removed from such equipment or systems; *or*

(2) Used for other purposes; *and*

(b) Is essential to the operation of such equipment or systems.

Internetwork Gateway

A "gateway" for two systems that are themselves "local area networks", "wide area networks" or both.

Local Area Network

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; *and*

(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

Main Storage

The primary storage for data or instructions for rapid access by a central processing unit. It consists of the internal storage of a "digital computer" and any hierarchical extension thereto, such as cache storage or non-sequentially accessed extended storage.

NOTE: For the determination of the size of "main storage" the cache storage may be excluded, provided:

(a) Its size does not exceed 6.25% (1/16th) of the size of "main storage" excluding cache storage; *and*

(b) It is designed to contain only data already contained in "main storage".

Maximum Bit Packing Density

The density of recording specified in accordance with the appropriate ANSI or ISO Standard (e.g., ANSI X3.14-1979, ISO 1863-1975; ANSI X3.22-1973, ISO 1873-1976; ANSI X3.39-1973, ISO 3788-1976; ANSI X3.48-1977, ISO 3407-1976; ANSI X3.56-1977, ISO 4057-1979; ANSI X3.54-1976).

Maximum Bit Transfer Rate

(a) Of a drum or disk drive (R_{tdmax}) is the product of:

(1) The maximum number of binary digit (bit) positions per unformatted track; *and*

(2) The number of tracks that simultaneously can be read or written, divided by the rotational period;

(b) Of a magnetic tape drive (R_{ttmax}), is the product of:

(1) The "maximum bit packing density";

(2) The number of data bits per character (ANSI) or per row (ISO); *and*

(3) The maximum tape read/write speed.

Microprogram

A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

Most Immediate Storage

The portion of the "main storage" most directly accessible by the central processing unit:

(a) For single level "main storage," this is the internal storage; *or*

(b) For hierarchical "main storage", this is:

(1) The cache storage;

(2) The instruction stack; *or*

(3) The data stack.

Multi-Data-Stream Processing

The "microprogram" or equipment architecture technique that permits processing two or more data sequences under the control of one or more instruction sequences by means such as:

(a) Parallel processing;

(b) Structured arrays of processing elements;

(c) Single Instruction Multiple Data (SIMD) operations; *or*

(d) Multiple Instruction Multiple Data (MIND) operations;

Net Capacity

Of a drum, disk or cartridge-type streamer tape drive, or a bubble memory:

The total capacity designed to be accessible to the "digital computer" excluding error control bits.

Non-volatile Storage

A storage device the contents of which are not lost when power is removed.

Other Peripheral Device

A "data device" that is:

(a) Peripheral to a central processing unit—"main storage" combination; *and*

(b) Not an input/output control unit—drum, disk or magnetic tape drive or bubble memory combination.

Personal Computer

A microprocessor based "digital computer" that is:

(a) Designed for a commercial/office environment;

(b) Designed and announced by the manufacturer for personal, home or business use; *and*

(c) Available for purchase over the counter at retail stores.

Principal element—

An element is a "principal element" when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation.

Program

A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

Real Time Processing

Processing of data by an electronic computer in response to an external event according to time requirements imposed by the external event.

Related Equipment

Equipment "embedded" in, "incorporated" in, or "associated" with electronic computers, as follows:

(a) Equipment for interconnecting "analog computers" with "digital computers";

(b) Equipment for interconnecting "digital computers";

(c) Equipment for interfacing electronic computers to "local area networks" or to "wide area networks";

(d) Communication control units;

(e) Other input/output (I-O) control units;

(f) Recording or reproducing equipment referred to ECCN 1565 by ECCN 1572;

(g) Displays; *or*

(h) Other peripheral equipment.

Note: "Related equipment" that contains an "embedded" or "incorporated" electronic computer, but lacks "user-accessible programmability", does not thereby fall within the definition of an electronic computer.

Signal Processing

The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g. Fast Fourier Transform or Walsh Transform).

Software

A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

Stored Program Controlled Circuit Switching

The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

Terminal Device

A "data device" that:

(a) Does not include process control sensing and actuating devices; *and*

(b) Is capable of:

(1) Accepting or producing a physical record;

(2) Accepting a manual input; *or*

(3) Producing a visual output.

Note: Normal groupings of such equipment (e.g., a combination of paper tape punch/reader and printer), connected to a single data channel or "communication channel", shall be considered as a single "total access rate" (R_{stot})—The sum of the individual "access rates" of all input/output control unit—drum or disk drive combinations (R_{sd}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this "total access rate".

Thus: R_{stot}=SUM R_{sd}

Total Connected Capacity

The storage capacity excluding error control bits, word marker bits, and flag bits.

Note: The following are illustrative examples of how to calculate various parameters:

Part A. Conversion of Byte to bit in computing storage limits:

(a) 1 Byte (B) = 8 bites
(b) 1 KByte (KB) = 1024 Bytes
(c) 1 MByte (MB) = 1024 KBytes
(d) 1 GByte (GB) = 1024 MBytes

Part B. Limits on "total connected capacity" of "mainstorage":

The limits in the various Notes to ECCN 1565A assume a 9-bit Byte and an appropriate amount of cache storage (16, 32, 48 or 64KByte), as follows (although other combinations within these limits would be permissible):

Internal storage (MByte)	Cache storage (KByte)	"Total connected capacity" (million bit)
0.25	16	2.5
0.5	16	4.9
0.75	32	7.4
1.0	32	9.8
1.5	48	14.6
2.0	48	19.4
2.5	64	24.2
4.0	64	39.0
8.0	64	76.7

Total Data Signalling Rate

The sum of the individual "data signalling rates" of all "communication channels" that:

(a) Have been provided with the system; *and*

(b) Can be sustained simultaneously assuming the configuration of the —quipment that would maximize this sum of rates.

Total Internal Storage Available to the User

The sum of the individual capacities of all internal user-alterable or user-replaceable storage devices that may be:

(a) Included in the equipment at the same time; *and*

(b) Used to store "software" instructions or data.

Total Processing Data Rate

(a) Of a single central processing unit, is its "processing data rate";

(b) Of multiple central processing units that do not share direct access to a common "main storage," is:

The individual "processing data rate" of each central processing unit, i.e., each unit is separately treated as a single central processing unit as in paragraph (a) above; *or*

(c) Of multiple central processing units that partially or fully share direct access to a common "main storage" at any level is the sum of:

(1) The highest of the individual 'processing data rates' of all central processing units; *and*

(2) 0.75 times the 'processing data rate' of each remaining central processing unit, sharing the same "main storage"; assuming the configuration of equipment that would maximize this sum of rates.

Processing Data Rate

The maximum of either:

(a) The 'floating point processing data rate' (R_f);

or

(b) The 'fixed point processing data rate' (R_x).

NOTE. The 'processing data rate' of a central processing unit implemented with two or more microprocessor microcircuits, not including any dedicated microprocessor microcircuit used solely for display, keyboard or input/output control, is the sum of the individual 'processing data rates' of all these microprocessor microcircuits.

Floating Point Processing Data Rate (R_f)

The sum of:

(1) 0.55 times the 'number of bits in a fixed point instruction (n_{is}) or 0.85 times the "number of bits in a floating point instruction' (n_{if}), if no fixed point instructions are implemented;

(2) 0.15 times the 'number of bits' in a floating point instruction' (n_{if});

(3) 0.40 times the 'number of bits in a fixed point operand'(n_{os}) or 0.40 times the 'number of bits in a floating point operand' (n_{of}), if no fixed point instructions are implemented;

and

(4) 0.15 times the 'number of bits in a floating point operand' (n_{of});

divided by the sum of:

(1) 0.85 times the 'execution time' for a fixed point addition (t_{as}) or for a floating point addition (t_{af}), if no fixed point instructions are implemented;

(2) 0.09 times the 'execution time' for a floating point addition (t_{af}); *and*

(3) 0.06 times the 'execution time' for a floating point multiplication (t_{mf}) or for the fastest available subroutine (t_{msub}) to simulate a floating point multiplication instruction, if no floating point multiplication instructions are implemented.

Thus:

$$Rf = \frac{(0.85)n_{is} + (0.15)n_{if} + (0.40)n_{os} + (0.15)n_{of}}{(0.85)t_{as} + (0.09)t_{af} + (0.06)t_{mf}} \text{ ; or}$$

If no fixed point instructions are implemented then:

$$Rf = \frac{(1.00)n_{if} + (0.55)n_{of}}{(0.94)t_{af} + (0.06)t_{mf}} \text{ ; or}$$

If no floating point multiplication instructions are implemented ($t_{mf} = t_{msub}$) then:

$$R_f = \frac{(0.85)n_{is} + (0.15)n_{msf} + (0.40)n_{os} + (0.15)n_{of}}{(0.85)t_{as} + (0.09)t_{af} + (0.06)t_{msub}}$$

NOTE: If a "digital computer" has neither floating point addition nor floating point multiplication instructions, then its 'floating point processing data rate' is equal to zero.

Fixed Point Processing Data Rate (R_x)—

The sum of:

(1) 0.85 times the number of bits in a fixed point addition instruction (n_{as});

(2) 0.15 times the 'number of bits in a fixed point multiplication instruction' (n_{ms}); *and*

(3) 0.55 times the 'number of bits in a fixed point operand' (n_{os});

divided by the sum of:

(1) 0.85 times the 'execution time' for a fixed point addition (t_{as}); *and*

(2) 0.15 times the 'execution time' for a fixed point multiplication (t_{ms}) or for the fastest available subroutine (t_{msub}) to simulate a fixed point multiplication instruction if no fixed point multiplication instruction are implemented.

Thus:

$$R_s = \frac{(0.85)n_{ias} + (0.15)n_{ims} + (0.55)n_{os}}{(0.85)t_{as} + (0.15)t_{ms}}$$

If no fixed point multiplication instructions are implemented ($t_{ms} = t_{msub}$), then:

$$R_s = \frac{(0.85)n_{ias} + (0.15)n_{ims} + (0.55)n_{os}}{(0.85)t_{as} + (0.15)t_{msub}}$$

Note: If a "digital computer" has neither fixed point addition nor fixed point multiplication instructions, then its 'fixed point processing data rate' is equal to zero.

'Number of bits in a:

'fixed point addition instruction' (n_{ias})—

'fixed point multiplication instruction' (n_{ims})—

'floating point addition instruction' (n_{iaf})—

'floating point multiplication instruction' (n_{imf})—

The appropriate shortest single fixed or floating point instruction length that permits full direct addressing of the "main storage".

Notes: 1: When multiple instructions are required to simulate an appropriate single instruction, the number of bits in the above instructions is defined as 16 bits plus the number of bits (b_{ias}, b_{ims}, b_{iaf}, b_{imf}) that permits full direct addressing of the "main storage".

Thus:

$n_{ias} = 16 + b_{ias}$
$n_{ims} = 16 + b_{ims}$
$n_{iaf} = 16 + b_{iaf}$
$n_{imf} = 16 + b_{imf}$

2. If the addressing capability of an instruction is expanded by using a base register, then the 'number of bits in an instruction, fixed or floating point, addition or multiplication' is the number of bits in the instruction with the standard address length including the number of bits necessary to use the base register.

Number of Bits in Fixed Point Operand (n_{os})

(a) The shortest fixed point operand length; *or*

(b) 16 bits;

whichever is greater.

Number of Bits in a Floating Point Operand (n_{of})

(a) The shortest floating point operand length; or

(b) 30 bits;

whichever is greater.

Execution Time

(a) The time certified or openly published by the manufacturer for the execution of the fastest appropriate instruction, under the following conditions:

(1) No indexing or indirect operations are included;

(2) The instruction is in the "most immediate storage";

(3) One operand is in the accumulator or in a location of the "most immediate storage" that is acting as the accumulator;

(4) The second operand is in the "most immediate storage"; *and*

(5) The result is left in the accumulator or the same location in the "most immediate storage" that is acting as the accumulator;

(b) If only the maximum and minimum execution times of the instructions are published, the sum of:

(1) The maximum execution time of an instruction (t_{max}); *and*

(2) Twice the minimum execution time of this instruction (t_{min});

divided by three.

Thus:

$$t = \frac{t_{max} + 2t_{min}}{3}$$

(t stands for any of the values t_{as}, t_{af}, t_{ms} or t_{mf})

(c) For central processing units that simultaneously fetch more than one instruction from one storage location: The average of the "execution times" when executing instructions fetched from all possible locations within the stored word.

(d) If the longest fixed point operand length is smaller than 16 bits, then use the time required for the fastest available subroutine to simulate a 16 bit fixed point operation.

NOTE: 1. If the addressing capability of an instruction is expanded by using a base register, then the "execution time" shall include the time for adding the content of the base register to the address part of the instruction.

NOTE 2: When calculating "processing data rate" for computers with cache sizes smaller than 64 KBytes, the "execution time" of the appropriate instructions will be calculated as follows:

(cache hit rate)×("execution time" when both instruction and operand are in cache storage)+(1−cache hit rate) X ("execution time" when neither instruction nor operand are in cache storage), the cache hit rate being:

1.00 for cache size of 64 KByte or more
0.95 for cache size of 32 KByte or more
0.90 for cache size of 16 KByte or more
0.85 for cache size of 8 KByte or more
0.75 for cache size of 4 KByte or more
0.65 for cache size of 2 KByte or more
0.50 for cache size of 1 KByte or more

But the cache effect will be neglected for computers with cache sizes smaller than 1 KByte.

Total Transfer Rate

(a) Of the input/output control unit—drum, disk or cartridge-type streamer tape drive combinations (R_{tdtot});

The sum of the individual "transfer rates" of all input/output control unit—drum, disk or cartridge-type streamer tape drive combinations (R_{td}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

Thus: $R_{tdtot} = \text{SUM } R_{td}$

Transfer Rate

(1) Of an input/output control unit—drum or disk drive combination (R_{td}), the smaller of either:

NOTE: For the "transfer rate" of an input/output control unit—cartridge-type streamer tape drive combination, see paragraph (b) below.

(i) The input/output control unit "transfer rate" (R_{tc}); *or*

(ii) The sum of the individual "transfer rates" of all independent seek mechanisms (R_{ts}).

Thus: $R_{td} = \min (R_{tc}; \text{SUM } R_{ts})$

(2) Of an input/output control unit (R_{tc}):

(i) With rotational position sensing (rps), is the product of:

(A) The number of independent read/write channels (C); *and*

(B) The greatest "maximum bit transfer rate" ($R_{tsmaxmax}$) of all independent seek mechanisms; *or*

(ii) Without rotational position sensing (rps), is two-thirds of this product.

Thus: $R_{tc} = C \times R_{tsmaxmax}$ (with rps); or

$$R_{tc} = \frac{2C \times R_{tsmaxmax} \text{ (without rps)}}{3}$$

(3) Of an independent seek mechanism (R_{ts}):

The product of:

(i) The "maximum bit transfer rate" (R_{tsmax}); *and*

(ii) The rotational period (t_r), divided by the sum of:

(i) The rotational period (t_r);

(ii) The "minimum seek time" (t_{smin}); and

(iii) The "latency time" (t_l).

Thus:

$$R_{ts} = \frac{R_{tsmax} \times t_r}{t_r + t_{smin} + t_l}$$

Minimum Seek Time (t_{smin})

(1) For fixed head devices, it is zero; *or*

(2) For moving head or moving media devices, the rated time to move from one track to an adjacent track.

Latency Time (t_l)

The rotational period divided by twice the number of independent read/write heads per track.

(b) Of the input/output control unit—magnetic tape drive combinations (R_{tttot}):

The sum of the individual "transfer rates" of all input/output control unit—magnetic tape drive combinations (R_{tt}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

Thus: $R_{tttot} = \text{SUM } R_{tt}$

Transfer Rate

Of an input/output control unit—cartridge-type streamer or magnetic tape drive combination (R_{tt});

The product of:

(1) The number of independent read/write channels (C); *and*

(2) The greatest "maximum bit transfer rate" ($R_{ttmaxmax}$) of all tape drives.

Thus: $R_{tt} = C \times R_{ttmaxmax}$

(c) Of the input/output or communication control unit—directly connected data channel combinations: The sum of the individual "transfer rates of all data channels" provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

Transfer Rate of Any Data Channel

The sum of the individual bit transfer rates of all the "other peripheral devices", excluding "terminal devices", that can be sustained simultaneously on the data channel.

User Accessible Microprogrammability

The facility allowing a user to insert, modify or replace "microprograms".

User Accessible Programmability

The facility allowing a user to insert, modify or replace "programs" by means other than:

(a) A physical change in wiring or interconnections; *or*

(b) The setting of function controls including entry of parameters.

Virtual Storage

The storage space that may be regarded as addressable "main storage" by the user of a computer system in which virtual addresses are mapped into real addresses.

NOTE: The size of "virtual storage" is limited by the addressing scheme of the computer system and not by the actual number of "main storage" locations.

Wide Area Network

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate with each other;

(b) May include "local area networks", and

(c) Is designed to interconnect geographically dispersed facilities.

ADVISORY NOTES 18—21 [Reserved]

NOTE: The following are illustrative examples of how to calculate various parameters:

Part A. *Conversion of Byte to bit in computing storage limits:*

(a) 1 M Byte=$(1,024)^2$ Byte=1,048,576 Byte

(b) 1 K Byte=1,024 Byte

(c) 1 Byte=8 bit or 9 bit

Part B. *Limits on "total connected capacity" of "main storage"*

The limits in the various Advisory Notes to ECCN 1565 assume a 9 bit Byte and an appropriate amount of cache storage (16, 32, 48 or 64 K Byte), as follows (although other combinations within these limits would be permissible):

Internal Storage (M Byte)	Cache Storage (K Byte)	"Total Connected Capacity" Limits (million bit)
0.25	16	2.5
0.5	16	4.9
0.75	32	7.4
1.0	32	9.8
1.5	48	14.6
2.0	48	19.4
2.5	64	24.2

(vii) "Personal computers" and "related equipment" therefor, not excluded from control by other sub-paragraphs of (h)(2), provided they meet *all* the following conditions:

(a) They are not described in paragraph (h)(1) of this List;

(b) They are shipped as complete systems;

(c) They are not stand-alone graphic workstations exceeding the limits of paragraph (a)(7) of Advisory Note 9;

(d) They are not ruggedized above the level required for a normal commercial/office environment;

(e) They do not include a central processing unit implemented with more than two microprocessor or microcomputer microcircuits; (*Note:* This restriction does not apply to any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.)

(f) They do not include a microprocessor or microcomputer microcircuit with a principal operand (data) word length of more than 16 bit or a bus architecture with more than 32 bit;

(g) "Total connected capacity" of "main storage" not exceeding 39 million bit (usually referred to as 4 MByte);

(h) Displays or monitors not exceeding the limits of paragraph (b)(8) of Advisory Note 9;

(i) *Reserved;*

(j) They do not include analog-to-digital or digital-to-analog converter microcircuits exceeding the limits of ECCN 1568A; (*Note:* This restriction does not apply to direct driven video monitors for normal commercial television.)

(k) Central processing unit—the "total processing data rate" does not exceed 69 million bit/s;

(l) I/O control unit—drum or disk drive combinations;

(*a*) A "total transfer rate" not exceeding 10.3 million bit/s;

(*b*) A total connected "net capacity" not exceeding 1320 Mbits (equivalent to 140 MBytes);

(*c*) A "total access rate" not exceeding 80 accesses per second, with a maximum of 40 accesses per second for any one drive;

(m) They do not include equipment controlled for export by ECCN 1519A(a)(2) or by ECCN 1567A;

6565G Computers excepted from control by ECCN 1565A.

Controls for ECCN 6565G

Unit: Report in number.

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

Technical Data: Technical data related to computers in this 6565G is controlled by ECCN 1565A, paragraph (j).

GLV $ Value Limit: General License GLV not applicable; however, another general license may apply.

Processing Code: CS

Reason for Control: Foreign policy.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa or entities enforcing apartheid identified in Supplement No. 1 to Part 785, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor for the use of these equipment or systems.

(See also Part 779 for controls on technical data.)

Controls for ECCN 1567A

Unit: Report switching equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

Technical Data and Software: Technical data related to items controlled by this ECCN is described in paragraph (c). GTDR with written assurance is available for Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CS.

Reason for Control: National security; foreign policy; nuclear non-proliferation.

Special Licenses Available: Commodities controlled by ECCN 1567A are subject to the same special licensing restrictions as those commodities controlled by ECCN 1565A.

Special South Africa Controls: Foreign policy export controls for ECCN 1567A apply only to software related to computer equipment destined for the Department of Cooperation and Developments, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, and administrative bodies of the "Homelands" that carry out similar functions in the Republic of South Africa. Applications for validated license will generally be considered favorably on a case-by-case basis for the export of software related to computers that would not be used to enforce the South African policy of apartheid.

TECHNICAL NOTES: 1. Stored program controlled communication switching equipment or systems are categorized as follows:

(a) Communication equipment or systems for "data (message) switching":

"Data (message) switching"—

The technique, including but not limited to store-and-forward or packet switching, for:

(a) Accepting data groups (including messages, packets, or other digital or telegraphic information groups transmitted as a composite whole);

(b) Storing (buffering) data groups as necessary;

(c) Processing part of all of the data groups, as necessary, for the purpose of:

(1) Control (routing, priority, formattting, code conversion, error control, retransmission or journaling);

(2) Transmission; *or*

(3) Multiplexing; *and*

(d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

"Local area network"—

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; *and*

(b) Is confined to a geographical area of moderate size (*e.g.* office building, plant, campus, warehouse).

"Wide area network"—

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate with each other;

(b) May include "local area networks"; and

(c) Is designed to interconnect geographically dispersed facilities.

(b) Communication equipment or systems for "stored program controlled circuit switching":

"Stored program controlled circuit switching"—

The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

2. "Digital computers" or "affiliated equipment" when:

(a) "Embedded" in stored program controlled communication switching equipment or systems are to be regarded as specially designed components therefor;

(b) "Incorporated" in stored program controlled communication switching equipment or systems are covered by this ECCN 1567A provided that they are the standard models customarily supplied by Western manufacturers of the stored program controlled communication switching equipment or systems; *or*

(c) "Associated" with stored program controlled communication switching equipment or systems are covered by ECCN 1565A or ECCN 1572A.

3. This ECCN 1567 includes statistical multiplexers, with digital input and digital output, referred to ECCN 1567 by ECCN 1519(A)(a) if they satisfy the definitions of either "data (message) switching" or "stored program controlled circuit switching".

NOTE: See ECCN 1519(A)(a) for statistical multiplexers that provide only fixed routing, *i.e.*, routing that is neither:

(a) Determined when the circuit is established; *nor*

(b) Dynamically alterable.

(For a complete list of definitions of terms used in this ECCN, see Advisory Note 8 below; see also ECCN 1565A for additional definitions relating to electronic computers and Supp. No. 3 to Part 779 for definitions relating to "software.")

List of Stored Program Controlled Communications Switching Equipment or Systems, and Specially Designed Components Therefor for the Use of these Equipment or Systems Controlled by ECCN 1567A

(a) Communication equipment or systems for "data (message) switching" including those for "local area networks" or for "wide area networks", *except* "data (message) switching" equipment or systems, provided:

NOTE: For "data (message) switching" equipment or systems for "local area networks" that can be used in conjunction with electronic computers, see ECCN 1565A.

(1) The equipment or systems are designed for fixed civil use according to the requirements of either:

(i) CCITT Recommendations F.1 to F.79 for store-and-forward systems (Volume II—Fascicle II.4, VIIth plenary assembly, 10th-21st November, 1980); *or*

(ii) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed up to and including 14th December, 1981);

(2) [Reserved]

(3) The maximum "data signalling rate" of any circuit does not exceed 9,600 bit/s;

(4) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(i) ECCN 1565A(f); *or*

(ii) ECCN 1565A (h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(i)(D) to (h)(1)(i)(J);

(5) The "software" supplied:

(i) Is limited to:

(A) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(B) Machine-executable form; *and*

(ii) Does not include "software":

(A) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(B) To permit user-modification of generic "software" or its associated documentation; *and*

(6) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(i) Exported on a temporary basis only; *and*

(ii) Kept under the control of the supplier;

(b) Communication equipment or systems for "stored program controlled circuit switching";

except:

(1) Key telephone systems provided that:

(i) Access to an external connection is obtained by pressing a special button (key) on a telephone, rather than by dial or key-pad as on a "PABX";

(ii) They are not designed to be upgraded to "private automatic branch exchanges" ("PABXs");

(iii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(iv) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(2) "Stored program controlled circuit switching" equipment or systems, provided:

(i) The equipment or systems are designed for fixed civil use in "stored program controlled telegraph circuit switching" for data;

(ii) [Reserved]

(iii) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f); *or*

(B) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

(iv) The equipment or systems do not have either of the following features:

(a) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches *or*

NOTE: This does not preclude single level call pre-emption (e.g. executive override).

(b) "Common channel signalling";

(v) The maximum internal bit rate per channel does not exceed 9,600 bit/s;

(vi) The telegraph circuits, which may be telephone circuits, may carry any type of telegraph or telex signal compatible with a voice channel bandwidth of 3,100 Hz as defined in CCITT Recommendation G.151.

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(3) "Stored program controlled telephone circuit switching" equipment or systems, provided that:

(i) The equipment or systems are designed for fixed civil use as "space division analog exchanges" or "time division analog exchanges" which fulfill the definition of "private automatic branch exchanges (PABXs)";

(ii) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f) *or*

(B) ECCN 1565 (h)(1)(i)(A) to (h)(1)(i)(M);

(iii) "Communication channels" or "terminal devices" used for administrative and control purposes:

(a) Are fully dedicated to these purposes; *and*

(b) Do not exceed a maximum "data signalling rate" of 9,600 bit/s;

(iv) Voice channels are limited to 3,100 Hz as defined in CCITT Recommendation G.151;

(v) [Reserved]

(vi) The "PABXs" do not have either of the following features:

(a) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches: *or*

NOTE: This does not preclude single level call pre-emption (e.g. executive override).

(b) "Common channel signalling".

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(4) "Stored program controlled telephone circuit switching" equipment or systems, provided that:

(i) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fulfill the definition of "private automatic branch exchanges" ("PABXs");

(ii) The equipment or systems do not have more than 512 ports;

(iii) Do not support any form of Integrated Services Digital Networks (ISDN);

(iv) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f); *or*

(B) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(v) The "PABXs" do not have any of the following features:

(A) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

NOTE: This does not preclude single level call pre-emption (e.g., executive override).

(B) "Common channel signalling";

(C) Dynamic adaptive routing;

(D) Reserved;

(E) Reserved;

(F) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(G) Reserved; *or*

(H) Centralized network control having all of the following characteristics:

(*1*) Is based on a network management protocol; *and*;

(*2*) Does all the following:

(*i*) Receives data from the nodes; *and*

(*ii*) Processes these data in order to:

(*A*) Control traffic; *and*

(*B*) Directionalise paths;

(vi) "Communications channels" or "terminal devices" used for administrative and control purposes;

(A) Are fully dedicated to these purposes; *and*

(B) Do not exceed 9,600 bit/s;

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(c) Technical data applicable to the development, production or use (i.e., installation, operation and maintenance) of stored program controlled communication switching equipment or systems, even if these equipment or systems are not controlled by this ECCN 1567A, *except* the minimum technical information necessary for the use of stored program controlled communication switching equipment or systems that are free from control.

NOTE 1: This ECCN 1567A does not control the shipment of the minimum technical data for the use (i.e., installation, operation and maintenance) of stored program controlled communication switching equipment or systems authorized for export, when shipped together with or solely for use with these stored program controlled communication switching equipment or systems.

ADVISORY NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of spare parts for previously exported stored program controlled communication switching equipment or systems. For the purposes of this ECCN 1567A, however, spare parts to upgrade the performance of the equipment up to the level specified in the relevant Advisory Note shall be permitted.

ADVISORY NOTE 3: [Reserved]

ADVISORY NOTE 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "stored program controlled telephone circuit switching" equipment or systems controlled by sub-paragraph (b), provided that:

(a) The equipment or systems are designed for fixed civil use as "space division digital exchanges" or "time division digital exchanges" that fulfill the definition of "private automatic branch exchanges (PABXs)";

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(3) Do not support any form of Integrated Services Digital Network (ISDN);

(c) [Reserved]

(d) The equipment or systems do not contain "digital computers" or "related equipment": controlled by:

(1) ECCN 1565A (f) *or*

(2) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(e) The "PABXs" do not have any of the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

NOTE: Paragraph (e)(1) of Advisory Note 4 does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) Interconnections that:

(i) Are specially designed for multi-RF channel radio equipment controlled by ECCN 1516A or ECCN 1531A(d);

(ii) Are specially designed for automatic hand-off of cellular radio calls to other cellular switches or to a centralised subscriber data base; *or*

(iii) Contain cryptographic equipment or software controlled ECCN 1527A;

(5) Reserved;

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) Reserved; *or*

(8) Centralised network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does all the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalise paths;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a maximum "data signalling rate" of 9,600 bit/s;

(g) Voice channels are limited to 3,100 Hz as defined in CCITT Recommendation G.151;

(h)–(i) [Reserved]

(j) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation; *and*

(k) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(l) [Reserved]

(m) Licenses to export commodities covered by this Advisory Note 4 must be accompanied by a statement identifying:

(1) The equipment or system to be provided;

(2) The intended application.

ADVISORY NOTE 5—6: [Reserved]

ADVISORY NOTE 7: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "stored program controlled circuit switching" equipment or systems, controlled by sub-paragraph (b), provided that:

(a) The equipment or systems are designed for fixed civil use as "stored program controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or "transit exchange";

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications;

(2) Will be operated in the importing country by a civil operating authority who has furnished to the supplier a signed statement certifying that the equipment or systems will be used for the specified end-use at a specified location only; *and*

(3) Do not support any form of Integrated Services Digital Network (ISDN);

(c) [Reserved]

(d) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A (f)(1) to (f)(4) or (g);

(e) The equipment or systems do not have any of the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

NOTE: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) Interconnections that:

(i) Are specially designed for multi-RF channel radio equipment controlled by ECCN 1516A or ECCN 1531A(d);

(ii) Are especially designed for automatic hand-off of cellular radio calls to other cellular switches or to a centralized subscriber data base; *or*

(iii) Contain cryptographic equipment or "software" controlled by ECCN 1527A;

(5) Digital subscriber line interfaces exceeding 64,000 bit/s;

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) [Reserved]; *or*

(8) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does both of the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalize paths;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes;

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a maximum "data signalling rate" of 9,600 bit/s;

(g) Voice channels are limited to 3,100 Hz as defined in CCITT Recommendation G.151;

(h) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation; *and*

(i) [Reserved]

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(k) [Reserved]

(l) Licenses to export commodities covered by this Advisory Note 7 must be accompanied by a statement identifying:

(1) The equipment or system to be provided;

(2) The intended application, including the number of lines, number of trunks and traffic load;

(3) The operating authority; *and*

(4) The location of the equipment or system.

NOTE 8: The following are definitions of terms used in this ECCN 1567A:

"Affiliated equipment"—

Equipment, as follows:

(a) Input/output (I/O) control units;

(b) Recording or reproducing equipment;

(c) Displays; or

(d) Other peripheral equipment.

"Common channel signalling"—

A signalling method in which a single channel between exchanges conveys, by means of labelled messages, signalling information relating to a multiplicity of circuits or calls and other information such as that used for network management.

"Communication channel"—

The transmission path or circuit including the terminating transmission and receiving equipment (modems) for transferring digital information between distant locations.

"Data device"—

Equipment capable of transmitting or receiving sequences of digital information.

"Datagram"—

Is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between these source and destination data terminal equipments and the transporting network.

"Data (message) switching"—

The technique, including but not limited to store-and-forward or packet switching, for:

(a) Accepting data groups (including messages, packets, or other digital or telegraphic information groups that are transmitted as a composite whole);

(b) Storing (buffering) data groups as necessary;

(c) Processing part or all of the data groups, as necessary, for the purpose of:

(1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling);

(2) Transmission; *or*

(3) Multiplexing; *and*

(d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

"Data signalling rate"—

The rate as defined in ITU Recommendation 53-36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Binary digits for coding, checking, and synchronization functions are included.

NOTE: It is the maximum one-way rate, *i.e.*, the maximum rate in either transmission or reception.

"Digital computer"—

Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; *and*

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"Embedded" in equipment or systems—

Can feasibly be neither:

(a) Removed from such equipment or systems; *nor*

(b) Used for other purposes.

"Fast select"—

A Facility applicable to virtual calls that allows a data terminal equipment to expand the possibility to transmit data in call set-up and clearing "packets" beyond the basic capabilities of a virtual call.

"Local area network"—

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; *and*

(b) Is confined to a geographic area of moderate size (*e.g.*, office building, plant, campus, warehouse).

"PABX"—See "private automatic branch exchange".

"Packet"—

A group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals and possibly error control information are arranged in a specified format.

"Packet-mode operation"—

The transmission of data by means of addressed "packets" whereby a transmission channel is occupied for the duration of the "packet" only. The channel is then available for use by "packets" being transferred between different data terminal equipments. In certain data communication networks the data may be formatted into a "packet" or divided and then formatted into a number of "packets" (either by the data terminal equipment or by equipment within the network) for transmission and multiplexing purposes.

"Private automatic branch exchange (PABX)"—

An automatic telephone exchange, typically incorporating a position for an attendant, designed to provide access to the public network and serving extensions in an institution such as a business, government, public service or similar organization.

"Software"—

A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Space division analog exchange"—

A "space division exchange", using an analog (including sampled analog) signal within the switching matrix.

Such exchanges can rout digital signals, subject to the bandwidth limitations of the equipment. Thus, such exchanges in public networks commonly pass digital data at rates of several kilobit per second per voice channel of 3,100 Hz as defined in CCITT Recommendation G.151.

NOTE: A "space division analog exchange" with a wideband switching matrix can be converted to a "space division digital exchange" by modifying some or all of the input interface circuitry.

"Space division digital exchange"—

A "space division exchange" that accommodates the transmission through the switching matrix of digital signals requiring a bandwidth wider than a voice channel of 3,100 Hz as defined in CCITT recommendation G.151.

NOTE: A "space division digital exchange" can be converted to a "space division analog exchange" by modifying some or all of the input interface circuitry.

"Space division exchange"—

An exchange in which different streams of data or voice signals are routed through the switching matrix along physically different paths. The signal being routed through the matrix can be analog (*e.g.*, conventional amplitude modulation, pulse amplitude modulation) or digital (*e.g.*, pulse code modulation, delta modulation or data).

"Specially designed software"—

The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software"; or

(b) Addition of "programs".

"Stored program controlled circuit switching"—

The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

"Stored program controlled telegraph circuit switching"—

Techniques essentially identical to those for "stored program controlled telephone circuit switching", for establishing connections between telegraph (*e.g.*, telex) circuits based solely on a subscriber type of signalling information.

"Stored program controlled telephone circuit switching"—

The technique for establishing within an exchange, on demand and until released, an exclusive direct (space division switching) or logical (time division switching) connection between calling and called telephone circuits:

(a) Based solely on a subscriber-type of telephone signalling information, derived from the calling circuit; *and*

(b) Processed according to the stored programs by one or more electronic computers.

The telephone circuits may carry any type of signal, *e.g.*, telephone or telex, compatible with a voice channel bandwidth of 3,100 Hz or less.

"Terminal device"—

A "data device" that:

(a) Does not include process control sensing and actuating devices; *and*

(b) Is capable of:

(1) Accepting or producing a physical record;

(2) Accepting a manual input; *or*

(3) Producing a visual output.

NOTE: Normal groupings of such equipment (*e.g.*, a combination of paper tape punch/reader and printer), connected to a single data channel or "communication channel", shall be considered as a single "terminal device".

"Terminal exchange"—

(a) A local exchange used for terminating subscribers' lines;

(b) A remote switching unit that performs some functions of a local exchange and operates under a measure of control from the parent exchange;

(c) A local exchange, typically 2-wire, used as a switching point for traffic between subordinate local exchanges, which may also provide 4-wire connections to and from the national long-distance network; *or*

(d) An exchange that performs any combination of functions in (a), (b) or (c) above.

"Time division analog exchange"—

A "time division exchange" in which the parameter, associated with an individual segment of a stream of data or voice signals, varies continuously.

"Time division digital exchange"—

A "time division exchange" in which the parameter, associated with an individual segment of a stream of data or voice signals, is one of a finite number of digitally coded values.

"Time division exchange"—

An exchange in which segments of different streams of data or voice signals are interleaved in time and routed through the switching matrix along a common physical path.

The matrix may also include one or more stages of space division switching.

The signal being routed through the matrix can be analog (*e.g.*, pulse amplitude modulation) or digital (*e.g.*, pulse code modulation, delta modulation or data).

"Total data signalling rate"—

The sum of the individual "data signalling rates" of all "communication channels" that:

(a) Have been provided with the system; *and*

(b) Can be sustained simultaneously assuming the configuration of the equipment that would maximize this sum of rates.

"Transit exchange"—

(a) An exchange, typically 4-wire, used as a switching point for traffic between other exchanges in the national network (historically known as a trunk exchange);

(b) A 4-wire exchange serving outgoing, incoming or transit international calls; *or*

(c) An exchange that performs any combination of functions in (a) or (b) above or those of a "terminal exchange".

"Trunk circuit"—

A circuit with associated equipments terminating in two exchanges.

"Trunk exchange"—See "transit exchange".

"Wide area network"—

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate with each other;

(b) May include "local area networks"; *and*

(c) Is designed to interconnect geographically dispersed facilities.

ADVISORY NOTE 9 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export of satisfactory end-users in the People's Republic of China of "data (message) switching" equipment or systems, controlled for export by sub-paragraph (a) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed to meet the requirements of either:

(1) CCITT Recommendations F.1 to 79 for store-and-forward systems (Volume II—Fascicle II.4, VIIth Plenary Assembly, November 10-21, 1980); *or*

(2) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed upon, up to and including December 14, 1981);

(b) The equipment or systems:

(1) Are designed and used for fixed civil "data (message) switching" applications;

(2) Will be used primarily for the specified civil application; *and*

(3) Will be operated in the importing country by:

(i) The Post, Telegraph and Telephone Authority in order to provide public "data (message) switching" services for:

(a) Domestic civil use; *or*

(b) International civil use with Western countries;

(ii) A civil authority that is a member of an intergovernmental organization including Western countries (*e.g.*, ITU or ICAO) in order to provide an extension of international "data (message) switching" services in the importing country to fulfill a commitment to the intergovernmental organization; *or*

(iii) A civil public service organization in order to provide "data (message) switching" services in a densely populated, commercial area for:

(a) Private domestic civil use; *or*

(b) Private international civil use with Western countries;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) [Reserved]

(e) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

(f) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems: *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(g) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; and

(2) Kept under the control of the supplier;

(h)–(i) [Reserved];

(j) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; and

(ii) The intended application and traffic load; and

(2) A complete identification of all end-users and their activities.

ADVISORY NOTE 10 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled telephone circuit switching" equipment or systems controlled by paragraph (b) provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" which fulfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) [Reserved]

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

(e) The "PABXs" do not have any of the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches; Note: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) [Reserved]

(5) [Reserved]

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) [Reserved], *or*

(8) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does both of the following:

(a) Receives data from the nodes: *and*

(b) Processes these data in order to:

(1) Control traffic; *and*

(2) Directionalize paths;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a maximum "data signalling rate" of 19,200 bit per second;

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCNs 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(k) [Reserved]

(l) [Reserved], *and*

(m) A license application to export any commodities covered by this Advisory Note includes a statement identifying:

(1) The equipment or system to be provided; *and*

(2) The intended application.

ADVISORY NOTE 11 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled circuit switching" equipment or systems controlled for export by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored-program-controlled telegraph circuit switching" for data;

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telegraph circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

(e) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

NOTE: This limitation does not preclude single level call pre-emption (*e.g.*, executive override).

(2) "Common channel signalling";

(f) The maximum internal bit rate per channel does not exceed 19,200 bit per second;

(g) [Reserved]

(h) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(i) [Reserved]

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(k) [Reserved]

(l) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

ADVISORY NOTE 12 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored program controlled circuit switching" equipment or systems, controlled by paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use as "stored program controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or "transit exchange";

(b) [Reserved]

(c) The equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(d) [Reserved]

(e) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A (f)(1) to (f)(4) or (g);

(f) [Reserved]

(g) The equipment or systems do not have any of the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

NOTE: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) [Reserved]

(5) [Reserved]

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) [Reserved], *or*

(8) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does both of the following:

(a) Receives data from the nodes; *and*

(b) Processes these data in order to:

(1) Control traffic; *and*

(2) Directionalize paths;

(h) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a maximum "data signalling rate" of 19,200 bit per second;

(i) [Reserved]

(j) The "software" supplied:

(1) Is limited to: (i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and* (ii) Machine-executable form; *and*

(2) Does not include "software": (i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or* (ii) To permit user-modification of generic "software" or its associated documentation;

(k) [Reserved]

(l) [Reserved], *and*

(m) A license application to export any commodities covered by this Advisory Note identifies: (1) The equipment or system to be provided; (2) The intended application; (3) The operating authority; *and* (4) The intended installation location of the equipment or system.

ADVISORY NOTE 13 [Reserved]

Advisory Note 14 (FOR THE PEOPLE'S REPUBLIC OF CHINA):

Licenses are likely to be approved for exports to satisfactory end-users in the People's Republic of China of equipment or "software" for "common channel signalling", contrary to the provisions in Advisory Notes 10 or 12 (for the People's Republic of China), provided that:

(a) The "common channel signalling" is restricted to "quasi-associated" or "associated mode of operation" according to CCITT Red Book, Volume X, fascicle X.1;

(b) No functions, other than those described in the following recommendations in the Red Book of CCITT: Q701 to Q709, Q721 to Q725, Q791 and Q795, are included;

NOTE: Only functions described in paragraph 2 of Q795 are to be included. These Q795 functions may not provide centralized network control functions as defined in Advisory Note 10(e)(8) or Advisory Note 12(g)(8).

(c) No form of Integrated Services Digital Network (ISDN) is provided;

(d) Equipment or "software" is restricted to those necessary for the operation within a city or, for "PABXs", within a radius of 100 km;

(e) No means are provided which will allow "common channel signalling" via analog transmission links;

(f) All the applicable conditions enumerated in paragraphs (a) to (e) of this Advisory Note are accomplished by: (1) Omission or physical removal of equipment or coding; (2) Over-writing with non-functioning statements; or (3) Reasonably non-reversible modifications.

ADVISORY NOTE 15 (FOR THE PEOPLE'S REPUBLIC OF CHINA): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of technical data or repair facilities controlled by this ECCN 1567A for repair of stored program controlled communication switching equipment or systems, provided that:

(a) Any technical data to be transferred is strictly limited to "operation technical data" as described in § 779.4(b)—(Any technical data that does not meet the requirements of § 779.4(b) for shipment under General License GTDR must be the subject of a separate export license application);

(b) The repair facilities: (1) Are specially designed equipment for repair; (2) Are to be used to repair controlled equipment exported pursuant to an Advisory Note or equipment that is not controlled for export; (3) Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced; (4) Do not provide local production facilities; *and* (5) Do not provide for testing of individual electronic components.

(c) The repair does not upgrade the equipment or systems beyond the performance thresholds of Advisory Notes 10 or 12 (for the People's Republic of China);

(d) All the records of repair activity are kept by a representative of the Western supplier;

(e) A license application to export any commodities covered by this Advisory Note includes a statement identifying: (1) The equipment to be provided; *and* (2) The users and their activities; *and*

(f) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 15 for the People's Republic of China (i.e., it continues to be controlled under ECCN 1565A(j)).

NOTE: Nothing in this Advisory Note shall be construed as overriding controls in other ECCNs contained in the Commodity Control List.

ADVISORY NOTE 16 FOR THE PEOPLE'S REPUBLIC OF CHINA: (NOT ELIGIBLE FOR GENERAL LICENSE G-COCOM) Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of "data (message) switching" equipment or systems controlled by paragraph (a) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use and stored program controlled "packet-mode operation";

(b) The equipment or systems do not have any of the following features: (1) "Datagram" service; (2) "Fast select"; (3) Dynamic adaptive routing; (4) Precedence, priority override or multilevel call preemption; (5) Centralized network control having all of the following characteristics: (i) Is based on a network management protocol; *and* (ii) Does all the following: (a) Receives data from the nodes: *and* (b) Processes these data in order to: (1) Control traffic; *and* (2) Directionalize paths;

(c) The "software" supplied: (1) Is limited to: (i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and* (ii) Machine-executable form; *and* (2) Does not include "software": (i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or (ii) To permit user-modification of generic "software" or its associated documentation;

(d) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*
(2) Kept under the control of the supplier;

(e) Systems for "packet-mode operation" are limited to five nodes;

(f) No "internetwork gateways" are provided other than for messages originating from or terminating in Western countries;

Note: Connections of private networks to international destinations must be via public "internetwork gateways".

(g) Each node in a system is limited to 64 ports;

(h) Node throughput does not exceed 153,600 octets per second;

Note: One octet in, at any port, plus one octet out, also at any port, equals a throughput of one octet. One octet is defined as eight bits residing in the user data field.

(i) All the applicable conditions enumerated in paragraphs (a) to (e) of this Advisory Note 16 are accomplished by: (1) Omission or physical removal of equipment or coding; (2) Over-writing with non-functioning statements; *or* (3) Reasonably non-reversible modifications.

Advisory Note 17 for the People's Republic of China: Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of technical data controlled by paragraph (c) of this ECCN 1567A, and of instrumentation, test equipment, components or specially designed "software" therefor for modification, production or use of equipment or system, provided that:

(a) The characteristics of the equipment or systems are limited to those which make them eligible for consideration under Advisory Notes 10 or 12 (for the People's Republic of China);

(b) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 17 for the People's Republic of China (i.e., it continues to be controlled under ECCN 1565A(j));

(c) Technical data for testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no-go tests;

(d) Generic "software" is exported in machine executable form only;

(e) No technical data for the design or development of printed circuit boards or integrated circuits is supplied;

(f) Technical data and training for "software" are limited to the creation or maintenance of customer specific data bases and site parameters;

(g) Modification of the equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Notes 10 or 12 (for the People's Republic of China);

(h) The contract includes explicit conditions to ensure that: (1) The technical data or equipment or systems are not reexported or exported, either directly or indirectly, to another proscribed destination without approval; (2) The supplier may appoint a representative in the People's Republic of China who could verify that the manufactured equipment was serving its intended use; (3) Any modification of the capabilities or functions of the equipment has been agreed to by both parties;

(i) The Western personnel have right of access to all the facilities directly involved in the modification and production of the equipment or systems.

Note: Paragraphs (c) or (e) of this Advisory Note 17 do not preclude exports of technical data that would be possible according to the provisions of Part 779.

II. Favorable consideration may also be given for exports to satisfactory end-users in the People's Republic of China of the minimally required associated materials and components controlled by this ECCN 1567A or other ECCNs in the Commodity Control List designated by the code letter "A" and specially designed "software" for modification, production or testing of equipment or systems.

Note: No export under this paragraph of Advisory Note 17 shall establish a precedent for export approval under other ECCNs in this Commodity Control List.

Advisory Note 18: (Not Eligible for General Licenses GFW or G-COM.) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups Q, W, and Y of technical data controlled by paragraph (c) of this ECCN 1567A, and of instrumentation, test equipment, and components and "specially designed software" therefor and materials and components controlled by this ECCN 1567A or other entries on the Commodity Control List, for modification or production of "stored program-controlled circuit switching" equipment or systems provided that:

Note: Technical data for general purpose computers is not eligible for consideration under Advisory Note 18 (i.e., it continues to be controlled under ECCN 1565A(j)).

(a) The characteristics of the "stored program controlled circuit switching" equipment or systems are limited to those that make them free from control or eligible for consideration under Advisory Notes;

(b) Modification of the "stored program controlled circuit switching" equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes;

(c) Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

NOTE: Paragraph (c) of this Advisory Note 18 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilize the transferred technical data, instrumentation and test equipment;

(e) The manufacturing of the load tape by the licensee is limited to the addition to the generic software of the specific customer data and site parameters;

(f) Development technical data is not included,

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the "stored program-controlled circuit switching" equipment or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recover source code or upgrade the system beyond the performance threshold or features of the relevant Advisory Notes;

(i) End-use reporting of the installed switching equipment will be provided as per applicable Advisory Notes;

NOTE: No export under Advisory Note 18 shall establish a precedent for export approval under other entries in the Commodity Control List.

ADVISORY NOTE 19: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "data (message) switching" equipment or systems controlled by paragraph (a) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed to meet the requirements of either:

(1) CCITT Recommendations F.1 to 79 for store-and-forward systems (Volume II—Fascicle II.4, VIIth plenary assembly, 10th-21st November, 1980); *or*

(2) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed up to and including 14th December, 1981);

(b) The equipment or systems:

(1) Are designed and used for fixed civil "data (message) switching" applications;

(2) Will be used primarily for the specified civil application; *and*

(3) Will be operated in the importing country by:

(i) The Post, Telegraph and Telephone Authority in order to provide public "data (message) switching" services for:

(A) Domestic civil use; *or*

(B) International civil use with Western countries;

(ii) A civil authority, which is a member of an intergovernmental organization including Western countries (e.g., ITU or ICAO), in order to provide an extension of international "data (message) switching" services in the importing country to fulfill a commitment to the intergovernmental organization; *or*

(iii) A civil public service organization, in order to provide "date (message) switching" services in a densely populated, commercial area for:

(A) Private domestic civil use; *or*

(B) Private international civil use with Western countries;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) [Reserved];

(e) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565(f); *or*

(2) ECCN 1565A(h)(1) (A) to (h)(l)(i) (M);

(f) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 of Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(g) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(h) [Reserved];

(i) [Reserved]; *and*

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(j) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load: *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 20: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "stored program controlled circuit switching" equipment or systems, controlled by paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored program controlled telegraph circuit switching" for data;

(b) the equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telegraph circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) [Reserved];

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f); *or*

(2) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(e) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(f) The maximum internal bit rate per channel does not exceed 9,600 bit/s;

(g) [Reserved];

(h) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 of the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(i) [Reserved];

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(k) [Reserved];

(l) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 21: Licenses are likely to be approved for export to satisfactory and end-users in Czechoslovakia, Hungary, and Poland of "stored program controlled communication switching" equipment or systems with any of the following features:

(a) "Common channel signalling";

(b) Digital subscriber line interfaces not exceeding a "data signalling rate" of 144,000 bit/s;

(c) Interconnections for cellular radio systems;

(d) "Communications channels" or "terminal devices" used for administrative and control purposes that do not exceed the limits in ECCN 1519A;

(e) Integrated Services Digital Network (ISDN);

Note: A license application to export any commodities covered by Advisory Note 21 must include an end-use statement from the importing government providing the government's assurance that:

(a) That export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

Advisory Note 22: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of technical data or repair facilities controlled by this ECCN 1567A for repair of stored program controlled communications switching equipment or systems; provided that:

(a) Any technical data to be transferred is strictly limited to "operation technical data" as described in § 779.4(b)—(Any technical data that does not meet the requirements of § 779.4(b) for shipment under General License GTDR must be the subject of a separate export license application);

(b) The repair facilities;

(1) Are specifically designed equipment for repair;

(2) Are to be used to repair controlled equipment authorized for export under an Advisory Note, or equipment that is not controlled for export;

(3) Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

(4) Do not provide local production facilities; *and*

(5) Do not provide for testing of individual electronic components;

(c) The repair does not upgrade the equipment or systems beyond the performance thresholds approved for export under the conditions of this ECCN 1567A;

(d) All the records of repair activity are kept by a representative of the Western supplier;

(e) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 22 (i.e., it continues to be controlled under ECCN 1565A(j)).

NOTE: Nothing in Advisory Note 22 overrides controls elsewhere in the Commodity Control List.

ADVISORY NOTE 23: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "data (message) switching" equipment or systems controlled by paragraph (a of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use and stored program controlled "packet-mode operation";

(b) The equipment or systems do not have any of the following features:

(1) "Datagram" service;

(2) "Fast select";

(3) Dynamic adaptive routing;

(4) Precedence, priority override or multilevel call preemption;

(5) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does all the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalize paths;

(c) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software," necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(d) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(e) Reserved;

(f) No "internetwork gateways" are provided other than for messages originating from or terminating in Western countries;

NOTE: Connections of private networks to international destinations must be via public "internetwork gateways".

(g) Node throughout does not exceed 153,600 octets per second;

NOTE: One octet in, at any port, plus one octet out, also at any port, equals a throughput of one octet. One octet is defined as eight bits residing in the user data field.

(h) Port throughout does not exceed a "data signalling rate" of 9,600 bit/s;

(i) All the applicable conditions enumerated in paragraphs (a) to (d) of this Advisory Note 23 are accomplished by:

(1) Omission or physical removal of equipment or coding;

(2) Over-writing with non-functioning statements; *or*

(3) Reasonably non-reversible modifications.

1568A Analog-to-digital and digital-to-analog converter equipment, position encoders and transducers, and specially designed components and test equipment therefor.

NOTE: For digital voltmeters or counters, see ECCN 1529A.

Controls for ECCN 1568A

Unit: Report instruments and equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General Licenses GCT or GDR: Analog-to-digital converters controlled by paragraph (a) or (e).

Processing Code: EE.

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to commodities described in paragraphs (a) and (e) in the List of this ECCN 1568A when usable in systems described in § 776.18(a) of this subchapter and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above −55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1568A.

Technical Data: Export of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1568A

(a) Electrical input type analog-to-digital converter equipment having either of the following characteristics:

(1) A resolution of 12 bits with a conversion time of less than 200 ns; *or*

(2) A resolution of more than 12 bits with a conversion time of less than 5 microseconds;

(b) Electrical input type digital-to-analog converter equipment having any of the following characteristics:

(1) A resolution of 12 bits with a maximum "setting time" to rated linearity of less than:

(i) 25 ns for current output type converter equipment; *or*

(ii) 200 ns for voltage output type converter equipment; *or*

(2) A resolution of more than 12 bits with a maximum "settling time" to rated linearity of less than:

(i) 1 microsecond for current output type converter equipment; *or*

(ii) 3 microseconds for voltage output type converter equipment;

(c) Solid-state synchro-to-digital or digital-to-synchro converters and resolver-to-digital or digital-to-resolver converters (including multipole resolvers) having a resolution of better than ±1 part in 5,000 per full synchro revolution for single speed synchro systems or ±1 part in 40,000 for dual speed systems;

(d) Mechanical input type position encoders and transducers, *except* complex servo-follower systems, as follows:

(1) Rotary types having:

(i) A resolution of better than 1 part in 265,000 of full scale; *or*

(ii) An accuracy better than ±2.5 seconds of arc;

(2) Linear displacement types having a resolution of better than 5 micrometers;

NOTE: Paragraph (d) of this ECCN 1568A includes absolute and incremental shaft position encoders, linear displacement encoders and inductosyns.

(e) Any equipment described above which is designed to operate below 218 K (−55°C) or above 398 K (+125°C).

4568B Electrical input type analog-to-digital converters and specially designed components therefor.

Controls for ECCN 4568B

Unit: Report instruments and equipment in "number" parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for County Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign controls apply to commodities described in this ECCN 4568B when usable in systems described in § 776.18(a) of this subchapter and having any of the following characteristics: Rated for continuous operation at temperatures from below −45° C to above 55° C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None.

Technical Data: Export of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Commodities Controlled by ECCN 4568B

(a) Electrical input type analog-digital converters not controlled by ECCN 1568A that:

(1) Have any of the following characteristics:

(i) A conversion rate of more than 200,000 complete conversions per second at rated accuracy;

(ii) An accuracy in excess of 1 part in more than 10,000 of full scale over the specified operating temperature range; or

(iii) A figure of merit 1 X 10^8 or more (derived from the number of complete conversions per second divided by the accuracy); *and*

(2) Have one or more of the following characteristics:

(i) Rated for continuous operation at temperatures from below −45° C to above 55° C; *or*

(ii) Designed to meet military specifications for ruggedized equipment, or modified for military end-use; *or*

(iii) Designed for radiation resistance;

(b) Specially designed components for the analog-to-digital converters described in paragraph (a) of this ECCN 4568B.

4569B Inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2,000 hertz.

Controls for ECCN 4569B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

5570F Thermoelectric materials and devices.

Controls for ECCN 5570F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $750 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to Part 778; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: Distribution License is available for shipments to countries listed in Supp. Nos. 2 or 3 to Part 773.

List of Thermoelectric Materials and Devices Controlled by ECCN 5570F

(a) Thermoelectric materials with a maximum product of the figure of merit (Z) and the temperature (T in °K) in excess of 0.75;

(b) Other power generating devices, and specially designed components therefor, that generate in excess of 22 W per kg (10 W per pound) or of 17.70 kW per cubic meter (500 W per cubic foot) of the devices' basic thermoelectric components.

TECHNICAL NOTE: The figure of merit (Z) equals Seebeck coefficient squared divided by the product of electrical resistivity and thermal conductivity. The weight and cubic measurements in paragraph (b) above are not intended to encompass the complete device but to include only the thermoelectric elements and assembly and the components for pumping calories. Other components, such as heating and/or cooling sources or containers, device frames or stands and control equipment are not to be included in the calculations.

NOTE 1: See also ECCN 1205A(c).

NOTE 2: Specify by name and model number.

1571A Magnetometers, magnetometer systems and related equipment, and specially designed parts therefor.

Controls for ECCN 1571A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1571A

(a) Magnetometers and magnetometer systems having or capable of having a sensitivity better than ±1.0 gamma ($\pm 10^{-5}$ oersteads), *except* magnetometers having sensitivities not better than ±0.1 gamma ($\pm 10^{-6}$ oersteads) where the reading rate capability is not faster than once per half second;

(b) Magnetometer test facilities able to control magnetic field values to an accuracy of 1.0 gamma (10^{-5} oersteads) or less;

(c) Magnetic compensation systems utilizing digital computers, non-magnetic platforms and calibration systems.

(For optical fibers, see ECCN 1526A(c) and (d).)

TECHNICAL NOTE 1: Sensitivity is defined as the visually recognized minimum sinusoidal signal in the frequency range of 0.025 Hz to 1.5 Hz when the signal-to-noise ratio is higher than 1.

TECHNICAL NOTE 2: The term "specially designed components therefor" is intended to include non-magnetic pumping lamps and heating coils, cryogenic magnetic componentry, enhanced resonance gases, and any form of dynamic signal-processing gradient compensation provided as part of, or designed for use with, magnetometers controlled for export by this ECCN. Enhanced resonance gases are gases of isotopes of cesium, rubidium and other metals that exhibit very sharp bands of response to pumping frequencies in optically pumped magnetometers.

TECHNICAL NOTE 3: Magnetometer systems use magnetic sensors, including those designed to operate at cryogenic temperatures, compensation systems, displays, recorders and associated electronics for signal processing target parameter detection, gradient compensation and dynamic range control.

1572A Recording or reproducing equipment, "recording media" and technical data, and specially designed components and accessories therefor.

(For equipment that may be exported in conjunction with computer shipments, see ECCN 1565A.)

NOTE: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1572A

Unit: Report equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

Technical Data: Technical data related to items controlled by this ECCN 1572A is described in paragraphs (e) through (h) in the List below. GTDR with written assurance is available for Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CS for equipment that may be used with electronic computers; EE for all other items.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Types of Recording and/or Reproducing Equipment, "Recording Media" and Specially Designed Components and Accessories Therefor Controlled by ECCN 1572A

NOTE: For equipment that may be used in conjunction with electronic computers, see ECCN 1565A.

(a) Recording or reproducing equipment using magnetic techniques, *except:*

(1) When specially designed for:

(i) Audio programs on tape or disk;

(ii) Analog recording or reproducing of video programs on tape or disk; or

NOTE: This paragraph (a)(1)(ii) does not apply to magnetic heads mounted on servomechanisms that include piezoelectric transducers and have a gap width less than 0.75 micrometer.

NOTE: Gap width is the dimension of the gap parallel to the relative movement between tape and head.

(iii) Digital reproducing (i.e., playback only) of video programs from tape or disk;

(2) When specially designed to use magnetic card, tag, label or bank check "recording media" with a magnetic surface area not exceeding 8,500 mm^2;

(3) Analog magnetic tape recorders having all of the following characteristics:

(i) Bandwidth at maximum speed not exceeding 300 kHz/track;

(ii) "Recording density" not exceeding 200 magnetic flux sine waves per linear mm/track;

(iii) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraphs (a)(3)(i) or (a)(3)(ii) of this ECCN;

(iv) Tape speed not exceeding 1.55 m/s;

(v) Number of recording tracks (excluding audio voice track) not exceeding 28;

(vi) Start-stop time not less than 25 ms;

(vii) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ±1 microsecond;

(viii) Not ruggedized for military use;

(ix) Not rated for continuous operation in ambient temperatures from below 233 K (−40 °C) to above 328 K (+55 °C); *and*

(x) Not specially designed for underwater use;

NOTE: This paragraph (a)(3) includes analog instrumentation recording equipment permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module).

(4) Digital cassette/cartridge tape drives or magnetic tape drives having all of the following characteristics:

(i) Not exceeding:

(A) A "maximum bit packing density" of 131 bit/mm/track; *or*

(B) A "maximum bit transfer rate" of 2.06 million bit/s;

(ii) Not ruggedized for military use;

(iii) Not specially designed for underwater use; *and*

(iv) Not rated for continuous operation in ambient temperatures from below 233 K (−40 °C) to above 328 K (+55 °C);

(b) Recording or reproducing equipment using "laser" beams, that produce patterns or images directly on the recording surface or reproduce from such surfaces, *except*:

(1) When specially designed for the production of audio or video disk masters for the replication of entertainment or education-type disks;

(2) Facsimile equipment such as used for commercial weather imagery and commercial wire photos and text;

(3) Consumer-type reproducers for audio or video disks employing non-erasable media;

(4) When specially designed for gravure (printing plate) manufacturing;

(c) Graphics instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 kHz;

(d) "Recording media" used in equipment controlled by paragraphs (a) or (b) of this ECCN 1572A, *except*:

(1) Magnetic tape having all of the following characteristics:

(i) Specially designed for television recording and reproduction or for instrumentation;

(ii) Being a standard commercial product;

(iii) Not designed for use in satellite applications;

(iv) A tape width not exceeding 25.4 mm;

(v) A magnetic coating thickness not less than:

(A) 2 micrometer if the tape length does not exceed 1,450 m; *or*

(B) 5 micrometer if the tape length does not exceed 6,000 m;

(vi) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(vii) A base material consisting only of polyester;

(viii) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(ix) A retentivity not exceeding 0.16 T;

(2) Magnetic tape having all of the following characteristics:

(i) Specially designed for television recording and reproduction or for instrumentation;

(ii) Being a standard commercial product; *and*

(iii) Having either of the following sets of characteristics:

(A) (*1*) A tape width not exceeding 50.8 mm;

(*2*) Not designed for use in satellite applications;

(*3*) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide;

(*4*) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and*

(*5*) A tape length not exceeding 1,096 m; *or*

(B) (*1*) A tape width not exceeding 25.4 mm;

(*2*) A magnetic coating material consisting of chromium dioxide;

(*3*) A base material consisting only of polyester; *and*

(*4*) A rated intrinsic coercivity not exceeding 60 kA/m (750 oersted);

(3) Video or audio magnetic tape in cassette having all of the following characteristics:

(i) Specially designed for television or audio recording and reproduction;

(ii) Being a standard commercial product;

(iii) A rated intrinsic coercivity not exceeeing 128 kA/m (1,600 oersted);

(iv) A retentivity not exceeding 0.30 T;

(v) A tape length not exceeding 650 m; *and*

(vi) A magnetic coating thickness not less than 2 micrometer;

(4) Video or audio magnetic tape having all of the following characteristics:

(i) A magnetic coating material consisting of undoped gamma-ferric oxide;

(ii) A rated intrinsic coercivity not exceeding 28 kA/m (350 oersted);

(iii) A tape width not exceeding 50.8 mm; *and*

(iv) A base material consisting only of polyester;

(5) Computer magnetic tape having all of the following characteristics:

(i) Designed for digital recording and reproduction;

(ii) A magnetic coating certified for a maximum "packing density" of 246 bit/mm or 356 flux changes per mm along the length of the tape;

(iii) A magnetic coating thickness not less than 3.6 micrometer;

(iv) A tape width not exceeding 25.4 mm;

(v) A tape length not exceeding 1,100 m; *and*

(vi) A base material consisting only of polyester;

(6) Computer flexible disks having both of the following characteristics:

(i) Designed for digital recording and reproduction; *and*

(ii) Not exceeding a "gross capacity" of 33 million bit;

(7) Rigid magnetic disk "recording media" having all of the following characteristics:

(i) Being a standard commercial product;

(ii) Non servo-written;

(iii) A "packing density" not exceeding 86.6 bit/mm;

(iv) Not exceeding 8 tracks/mm; *and*

(v) Conforming to any of the following specifications:

(A) Unrecorded single disk cartridges (front loading (2315-type)) designed to meet ANSI X3.52-1976;

(B) Unrecorded single disk cartridges (top loading (5440-type)) designed to meet ISO 3562-1976;

(C) Unrecorded six-disk packs (2311 type) designed to meet ANSI X3.46-1974 or ISO 2864-1974(E); *or*

(D) Unrecorded eleven-disk packs (2316 type) designed to meet ANSI X3.58-1977 or ISO 3564-1976;

(e) Technical data for the development, production or use of recording or reproducing equipment described in this ECCN 1572A, *except*:

(1) Technical data unique to equipment not controlled by paragraphs (a)(1)(i), (a)(1)(ii), (a)(2), (b), or (c) of this ECCN 1572A;

NOTE: This paragraph (e)(1) does not apply to technical data for the design or production of:

(a) Cylindrical structures used to record or reproduce video signals in a helical scan system recorder or reproducer; *and*

(b) Recorded alignment tapes used in the production of recording or reproducing equipment.

(2) The minimum technical data necessary for the use of equipment that may be exported under the provisions of this ECCN 1572A;

(f) Technical data, as follows, for the continuous coating of magnetic tape described in this ECCN 1572A:

(1) Technical data for the formulation of coating material;

(2) Technical data for the application of coating material to the backing;

(g) Technical data, as follows, for the manufacture of flexible disk "recording media" described in this ECCN 1572A:

(1) Technical data for the formulation of coating material;

(2) Technical data for the application of coating material to the flexible backing;

(h) Technical data for the development or production of rigid disk "recording media" described in this ECCN 1572A.

NOTE 1: This ECCN 1572A does not control:

(a) Systems having all of the following characteristics:

(1) Designed for use in civil aircraft or helicopters to record flight data for safety or maintenance purposes;

(2) No more than 100 input channels; and

(3) A sum of the individual channel recording bandwidth not exceeding 500 Hz;

(b) Incremental recorders or reproducers having all of the following characteristics:

(1) Designed for discontinuous sampling or collection of data in an incremental manner;

(2) The maximum tape speed, at the maximum stepping rate, does not exceed 50.8 mm/s;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K (-40 °C) to above 328 K (+55 °C);

(5) Not specially designed for underwater use; and

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (a)(3)(vii) of this ECCN 1572A;

(c) Digital magnetic recorders having both of the following characteristics:

(1) Specially designed for seismic or geophysical applications; *and*

(2) Operating in the frequency range from 5 to 800 Hz.

Note 2: This ECCN 1572A does not control instrumentation digital recorders having all of the following characteristics:

(a) "Packing density" of 1,312.5 bit/mm or less;

(b) Maximum of 28 tracks;

(c) Tape speed of 3.05 m/s or less;

(d) Not designed for underwater use; *and*

(e) Not ruggedized for military use.

(Advisory) Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of computer tape in cassettes or cartridges having all of the following characteristics:

(a) Designed for digital recording and reproduction;

(b) A magnetic coating certified for a "packing density" of 394 bit/mm along the length of the tape;

(c) A tape width not exceeding 25.4 mm;

(d) A tape length not exceeding 1,100 m.

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of magnetic tape controlled by paragraph (d) of this ECCN 1572A having all of the following characteristics:

(a) Intended for insertion in cassettes or cartridges specially designed for television or audio recording or reproduction under a commercial agreement;

(b) Being a standard commercial product;

(c) Not designed for use in satellite applications;

(d) A tape width not exceeding 25.4 mm;

(e) A magnetic coating thickness not less than 2 micrometer;

(f) A magnetic coating material consisting of doped or undoped gamma-ferric oxide;

(g) A base material consisting only of polyester;

(h) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted);

(i) A retentivity not exceeding 0.167 T; *and*

(j) A tape length not exceeding 6,500 m.

(Advisory) Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of reasonable quantities of analog magnetic tape recorders controlled by paragraph (a) of this ECCN 1572A, and specially designed components and "recording media" therefor controlled by paragraph (d) of this ECCN 1572A, for use with those recorders, provided that:

(a) The equipment is intended for a legitimate civil end-use and is reasonable for that use;

(b) The analog magnetic tape recorders are limited to those equipped with tape derived (off-tape) servospeed control and with a time displacement (base) error of not less than ±0.8 microsecond at a tape speed of 1.524 m/s and not less than ±1.6 microsecond at any lower tape speed measured in accordance with applicable IRIG and EIA documents.

(Advisory) Note 6 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of recording and reproducing equipment, as follows:

(a) Analog magnetic tape recorders with all the following characteristics:

(1) Bandwidth not exceeding:

(i) 4 MHz/track and having up to 28 tracks; *or*

(ii) 2 MHz/track and having up to 42 tracks;

(2) Tape speed of 6.1 m/s or less;

(3) Not designed for underwater use;

(4) Not ruggedized for military use; *and*

(5) Recording density not exceeding 653.2 magnetic flux sine waves per mm;

(b) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this (Advisory) Note 6 or under any other (Advisory) Note in the CCL indicating a likelihood of approval for export to Country Groups QWY or to the People's Republic of China, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(c) Disks appropriate for use with disk drives free from control or exportable under this (Advisory) Note 6 or under any other (Advisory) Note in the CCL indicating a likelihood of approval for export to Country Groups QWY or to the People's Republic of China, provided that the "packing density" and inner and outer diameters do not exceed the performance limits of the disk drives;

(d) Video magnetic tape recorders specially designed for television recording.

Definitions of Terms

"Packing density" for digital recorders—

The number of bits per second per track divided by the tape speed.

"Recording density" for direct recorders—

The recording bandwidth divided by the tape speed.

"Recording density" for FM recorders—

The sum of the carrier frequency and the deviation divided by the tape speed.

"Recording media"—

All types and forms of specialized media used in recording techniques, including tapes, drums, disks and matrices.

1573A "Superconductive" electromagnets and solenoids.

Controls for ECCN 1573A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

List of Items Controlled by ECCN 1573A

"Superconductive" electromagnets and solenoids, as follows:

(a) Having a non-uniform distribution of current-carrying windings, measured along the axis of symmetry when specially designed for gyrotron applications, *except* those rated for both:

(1) Magnetic induction of less than 1 T; *and*

(2) "Overall current density" in the windings of less than 10,000 A/cm²;

(b) Specially designed to be fully charged or discharged in less than one minute, provided that:

(1) The maximum energy delivered during discharge divided by the duration of the discharge is more than 500 kJ per minute;

(2) The inner diameter of the current-carrying windings is more than 60 mm; *and*

(3) They are rated for magnetic induction of more than 8 T or "overall current density" in the windings of more than 10,000 A/cm².

NOTE: This ECCN 1573A does not control superconductive electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

Definition of Terms

Critical Temperature—

The "critical temperature" (sometimes referred to as the transition temperature) of a specific "superconductive" material is the temperature at which the material loses all resistance to the flow of direct current.

Overall current density—

The total number of ampere-turns in the coil (i.e., the sum of the number of turns multiplied by the maximum current carried by each turn) divided by the total cross-section of the coil (comprising the superconducting filaments, the metallic matrix in which the superconducting filaments are embedded, the encapsulating material, any cooling channels, etc.).

Superconductive—

Materials, i.e., metals, alloys or compounds, than can lose all electrical resistance, i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating. The "superconductive" state of a material is individually characterized by a "critical temperature", a critical magnetic field that is a function of temperature, and a critical current density that is, however, a function of both magnetic field and temperature.

1574A Electronic devices, circuits or systems containing components manufactured from "superconductive" materials.

Controls for ECCN 1574A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 1574A

Electronic devices, circuits or systems containing components manufactured from "superconductive" materials, as follows: (a) Specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents; *and*

(b) Performing functions such as:

(1) Electromagnetic sensing and amplification;

(2) Current switching;

(3) Frequency selection; *or*

(4) Electromagnetic energy storage at resonant frequencies above 1 MHz.

NOTE 1 This ECCN includes Josephson-effect devices and superconducting quantum interference devices (squids).

NOTE 2: This ECCN 1574A does not control equipment specially designed for laboratory research on materials characterization containing superconducting quantum interference devices (squids) when such devices:

(1) Are fixed in the equipment in a large and bulky configuration (at least 16,400 mm³) so that the device cannot be used effectively in other systems, such as military systems, and any attempt to remove, modify or redeploy the squids would destroy them;

(b) Have an energy sensitivity not better than 10^{-30} J per Hz; *and*

(c) Are magnetically shielded to be insensitive to magnetic field fluctuations external to such equipment, so that the equipment cannot function without the magnetic shield in place surrounding the superconducting magnetic sensing circuitry.

(ADVISORY) NOTE 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment specially designed for biomagnetic measurements for medical diagnostics containing superconducting quantum interference devices (squids) provided that:

(a) The squid components, including the squid input and output coupling coils and any associated magnetic shield, are fixed, using an epoxy resin, directly to the instrument so that any attempt to remove, modify or redeploy the squid device would destroy it; and

(b) The squid's range of electrical utility is restricted (e.g., through impedance matching) so that it is suitable only for the intended end-use by meeting the following two requirements:

(1) The effective gradient sensitivity of the medical device must be more (worse) than 3×10^{-4} nT (root mean square) measured in a 1 Hz signal bandwidth per meter; and

(2) The magnetic shield containing the squid components described in paragraph (a) of this ECCN 1574A must have a volume exceeding 4,000 mm³, or the input inductance of the embedded squid must be less than 50 nH.

Definitions of Terms

Critical temperature—

The "critical temperature" (sometimes referred to as the transition temperature) of a specific "superconductive" material is the temperature at which the material loses all resistance to the flow of direct current.

Superconductive—

Materials (i.e., metals, alloys or compounds) that can lose all electrical resistance (i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating).

NOTE: The "superconductive" state of a material is individually characterized by a "critical temperature", a critical magnetic field that is a function of temperature, and a critical current density that is, however, a function of both magnetic field and temperature.

5584F Oscilloscopes, transient recorders and plug-in modules, as follows, and specially designed components, including amplifiers, preamplifiers and sampling devices therefor.

NOTE: Oscilloscopes may also be referred to as waveform recorders or waveform digitizers.

Controls for ECCN 5584F

Unit: Report oscilloscopes in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $3,000 for Taiwan and Country Group T & V countries listed in Supplement No. 4 to Part 778 of this subchapter; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Nuclear nonproliferation; foreign policy. Foreign policy controls apply to exports and reexports to Iran.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 5584F

(a) Analogue oscilloscopes or plug-in modules having any of the following characteristics:

(1) Non-modular oscilloscopes having a "bandwidth" exceeding 250 MHz;

(2) Modular oscilloscope systems having either of the following:

(i) "Mainframes" with a "bandwidth" exceeding 250 MHz; *or*

(ii) Plug-in modules with an individual "bandwidth" exceeding 400 MHz;

(3) Having a horizontal sweep speed faster than 1 ns per cm with an accuracy (linearity) better (less) than 2% measured over a 1 ns time interval; *or*

(4) Containing or designed for use with cathode-ray tubes controlled by ECCN 5541F(c);

(b) Digital oscilloscopes or transient recorders with either of the following characteristics:

(1) A digitizing or sampling rate exceeding 250 million samples per second for measurement of single-shot phenomena; *or*

(2) A "bandwidth" exceeding 4 GHz for measurement of recurring phenomena;

(c) Containing or designed for use with cathode-ray tubes controlled by ECCN 5541F(c);

(d) Ruggedized to meet a military specification;

(e) Rated for operation over an ambient temperature range of from below −25 °C to +55 °C;

(f) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 4 GHz; or

(g) Digital oscilloscopes with sequential sampling of the input signal at an interval of less than 50 nanoseconds.

(Specify by name and model number.)

TECHNICAL NOTES: Definition of terms for the purpose of this ECCN 5584F.

1. *"Bandwidth"*. The band of frequencies over which the displayed signal does not fall by more than 3 dB (i.e., below 70.7%) of that at the maximum point measured with a constant input voltage.

2. *"Mainframes"*. Equipment that includes a display, power supply and means of accepting and utilizing the plug-in modules.

1585A Cameras, components and photographic recording media.

NOTE: For cameras operating at below 190 nm (ultra-violet) or above 1,200 nm (infrared), see ECCN 1502A.

NOTE: For cameras specially designed or modified for underwater use, see ECCN 1417A.

Controls for ECCN 1585A

Unit: Report cameras in "number"; film in "sq. ft. "; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: High speed photographic equipment controlled by paragraph (b), (c), or (d).

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation controls apply to paragraphs (b) through (e) and (f)(1), (f)(2) and (g).

Special Licenses Available: None for commodities defined in paragraphs (b) through (g) below. See Part 773 for special licenses available to export commodities defined in (a).

List of Equipment Controlled by ECCN 1585A

Cameras, components and photographic recording media therefor, as follows:

(a) High speed cinema recording cameras and equipment as follows:

(1) Cameras in which the film is continuously advanced throughout the recording period, and which are capable of recording at framing rates exceeding 13,150 frames per second, using any camera and film combination from the standard 8 mm to 90 mm size inclusive;

(2) Special optical or electronic devices which supplement, replace, or are interchangeable with standard camera components for the purpose of increasing the number of frames per second exceeding the limits in paragraph (a)(1) above;

(b) Mechanical high speed cameras and specially designed parts and accessories therefor, in which the film does not move, and which are capable of recording at rates exceeding 1,000,000 frames per second for the full framing height of standard 35 mm wide photographic film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

(c) Cameras incorporating electron tubes controlled by ECCN 1555A, except *television or video cameras specially designed for television broadcasting use;*

(d) Mechanical or electronic streak cameras having writing speeds of 10 mm/microsecond and above;

(e) Electronic framing cameras having a speed exceeding 10^6 frames per second;

(f) Video cameras incorporating solid state sensors, having any of the following characteristics:

(1) More than 4 × 10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

(2) More than 4 × 10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; or

(3) More than 12 × 10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

NOTE: The camera output in each case is thereby limited to 4 × 10^6 resolvable elements excluding color information.

TECHNICAL NOTE: Definition of terms used in this ECCN 1585A

"*Active pixels.*" A minimum element of the solid state array (sensor) that has a photoelectric transfer function and that is exposed to the light.

(g) Electronic cameras having both of the following characteristics:

(1) An electronic shutter speed (gating capability) of less than 10 microseconds per full frame; *and*

(2) A read out time allowing a framing rate of more than 400 full frames per second;

(h) Camera shutters with speeds of 50 nanoseconds or less per operation, and specialized parts and accessories therefor;

(i) Film, as follows:

(1) Having a speed of ISO 10,000 (or its equivalent) or better;

(2) Color film having a spectral sensitivity extending beyond 7,200 Angstroms or below 2,000 Angstroms;

(j) Cameras incorporating:

(1) Linear detector arrays exceeding a size of 4,096 elements per array; *and*

(2) Mechanical scanning in one direction.

NOTE 1: [Reserved]

NOTE 2: [Reserved]

(ADVISORY) NOTE 3: (GFW Eligibility Restricted to those Countries Listed in Supplement Nos. 2 or 3 to Part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of cameras controlled only by paragraph (j) above provided:

(a) They are intended for civil end-users and civil end-users; *and*

(b) They do not contain linear detector arrays exceeding a size of 8,192 elements per array.

(ADVISORY) NOTE 4 FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of mechanical framing cameras controlled by paragraph (b) of this ECCN that are designed for civil purposes (i.e., non-nuclear uses) with a framing speed of not more than 2 x 10^6 frames per second.

NOTE 5: Paragraph (a)(1) of this ECCN 1585A does not control non-ruggedized cinema recording cameras for normal civil purposes.

4585B Streak cameras capable of recording events that are initiated by, or synchronized with, the camera mechanism (i.e., discontinuous access type), having a design capability for writing speeds of 8 mm per microsecond ***and*** **above** and a time resolution of 100 nanoseconds or less, and parts and accessories, n.e.s.

Controls for ECCN 4585B

Unit: Report cameras in "number"; film in "sq. ft."; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V; $0 for all other destinations.

Processing Code: CM.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: None.

5585C Other high-speed continuous writing, rotating drum cameras capable of recording at rates in excess of 2,000 frames per second, and parts and accessories, n.e.s.

Controls for ECCN 5585C

Unit: Report cameras in "number"; film in "sq. ft."; parts and accessories in "$ value."

Validated License Required: Country Groups QSWYZ, Afghanistan, the People's Republic of China and as required by Special South Africa policy below.

GLV $ Value Limit: $100 for Country Group Q. General License *GLV* not applicable to other destinations; however, another general license may apply.

Processing Code: MG.

Reason for Control: Nuclear nonproliferation.

Special South Africa Controls: A validated license is required for export to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa or for use in servicing equipment owned, controlled or used by or for these entities. See § 785.4(a).

Special Licenses Available: None.

1586A Acoustic wave devices and specially designed components therefor.

Controls for ECCN 1586A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

GFW Eligibility: Commodities that meet technical specifications described in Advisory Note 1 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

List of Acoustic Wave Devices and Specially Designed Components Controlled by ECCN 1586A

(a) Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, signal-processing devices employing elastic waves in materials, including but not limited to lithium niobate, lithium tantalate, bismuth germanium oxide, silicon, quartz, zinc oxide, aluminium oxide (sapphire), gallium arsenide and alpha-aluminium phosphate (berlinite), which permit direct processing of signals, including but not limited to convolvers, correlators (fixed, programmable and memory), oscillators, bandpass filters, delay lines (fixed and tapped) and non-linear devices, having any of the following characteristics:

(1) A carrier frequency of greater than 400 MHz;

(2) A carrier frequency of 400 MHz or less, *except those specially designed for home electronics and entertainment type applications, having any of the following characteristics:*

(i) *A side-lobe rejection of greater than 45 dB;*

(ii) *A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) greater than 100;*

(iii) *A dispersive delay of greater than 10 microseconds:*

(iv) *An insertion loss of less than 10 dB;*

(b) Bulk (volume) acoustic wave devises (*i.e.*, signal processing devices employing elastic waves in the various materials described in paragraph (a) above) which permit direct processing of signals at frequencies over 1 GHz including but not limited to fixed delay lines, non-linear and pulse compression devices.

(c) Acousto-optic signal-processing devices employing an interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including but not limited to spectral analysis, correlation or convolution;

TECHNICAL NOTE: This sub-paragraph controls devices made from acousto-optic materials, including but not limited to lithium niobate, bismuth germanium oxide, bismuth silicon oxide, gallium arsenide, gallium phosphide, tellurium oxide and lead molybdenate.

Note [Reserved]

(Advisory) Note 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following devices controlled for export by subparagraph (a)(1) that are specially designed for civil applications and that operate at frequencies below 1 GHz:

(a) Devices for civil television equipment;

(b) Devices for video or AM and FM broadcasting equipment;

(c) Non-reprogramable devices for pagers, cellular radio communication equipment, automobile radio communication equipment or cordless telephone sets.

4587B Quartz crystals and assemblies thereof in a stage of fabrication (i.e., worked, semi-finished or mounted).

Controls for ECCN 4587B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General Licenses GCT or GDR: Temperature compensated crystal oscillators controlled by paragraph (c).

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply to commodities described in this ECCN 4587B only when usable as launch and ground support equipment for nuclear weapons delivery systems.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 4587B.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 4587B

Temperature-compensated crystal oscillators having any of the following characteristics:

(a) A stability with respect to temperature of better (less) than $\pm 1.0 \times 10^{-7}$ over an operating temperature range exceeding 70° C; percent over their operating temperature range;

(b) An operating temperature range wider than 120° C;

(c) Rated to have an acceleration sensitivity of less than 1×10^{-9} of the operating frequency per g (where $g = 981$ cm/sec^2) over a vibration test frequency range from 10 to 2,000 Hz sine wave and with a maximum level of acceleration not exceeding 20 g;

(d) Designed to withstand a shock greater than 10,000 g (where $g = 981$ cm/sec^2) over a period of 1 millisecond; or

(e) Radiation hardened to better than 10^{-10} of the operating frequency per gray (1 rad$=10^{-2}$ gray).

Notes: 1. This ECCN only covers quartz crystals having piezo-electric qualities. This definition does not cover optical grade quartz crystals.

2. This ECCN does not control quartz crystals for use as filters elements that have either of the following characteristics:

(a) Designed for operation as intermediate frequency filters operating from 10.5 to 11 MHz or from 21 to 22 MHz with 3 dB bandwidths not exceeding 40 kHz; or

(b) Designed for operation as single sideband filters operating at from 1 to 10 MHz with 3 dB bandwidths not exceeding 4 kHz.

3. Nothing in this ECCN shall be construed as sanctioning the export of technology for quartz crystal elements or assemblies thereof.

4592B Equipment for measuring pressures to 100 Torr or less having corrosion-resistant sensing elements of nickel, nickel alloys, phosphor bronze, stainless steel, or aluminum.

Controls for ECCN 4592B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ, except countries identified in Supp. Nos. 2 and 3 to Part 773.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: Distribution License is available for shipments to countries listed in Supp. Nos. 2 or 3 to Part 773. No other special licenses are available.

6594F Electronic equipment specially designed to service or manufacture computers, n.e.s. (specify make and model).

Control for ECCN 6594F

Unit: Report in "number".

Validated License Required: SZ and the Republic of South Africa;

GLV $ Value Limit: $0 to all destinations.

Processing Code: EE

Reason for Control: Foreign policy, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440, October 2, 1986).

Special Licenses Available: See Part 773.

ADVISORY NOTE: Licenses are likely to be approved for export to the Republic of South Africa if the recipient has provided the written assurance required by § 785.4(a)(9).

1595A Gravity meters (gravimeters,) gravity gradiometers and specially designed components therefor, except those items listed in paragraphs (a) and (b) below.

Controls for ECCN 1595A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Gravity meters (gravimeters), gravity gradiometers, and specially designed components, as follows: (1) Designed or modified for airborne or marine use, *and;*
(2) Having a static or operational accuracy of one milligal or better, with a time to steady state registration of two minutes or less.

Processing Code: TE.

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1595A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 1595A

Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, *except:*

(a) Gravity meters for land use having any of the following characteristics:

(1) Static accuracies of not less than 100 microgal; *or*

(2) Being of the Worden type;

(b) Marine gravimetric systems having any of the following characteristics:

(1) Static accuracies of 1 milligal or more; or

(2) An in-service (operational) accuracy of 1 milligal or more with a time to steady state registration of two minutes or greater under any combination of attendant corrective compensations and motional influences.

4597B Voice print identification and analysis equipment; and parts, n.e.s.

(Specify by name and type number.)

Controls for ECCN 4597B

Unit: Report instruments and equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EE.

Reason for Control: Crime control (foreign policy).

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) controlled by this ECCN, except to Australia, Japan, New Zealand, and members of NATO.

Special Licenses Available: None.

Advisory Note: Applications for validated export licenses generally will be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

5597B Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

Controls for ECCN 5597B

Unit: Report instruments and equipment in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM for fingerprint equipment/analyzers/cameras; EE for all other items.

Reason for Control: Crime control (foreign policy).

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) controlled by this ECCN, except to Australia, Japan, New Zealand, and members of NATO.

Special Licenses Available: None.

Advisory Note: Applications for validated export licenses generally will be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

6598F Other navigation, direction finding, radar, and airborne communication equipment, including their parts and components, n.e.s.; other mobile communications equipment, n.e.s.; other marine or terrestrial acoustic equipment capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles, n.e.s.; other underwater camera equipment, n.e.s.; other electronic test equipment, n.e.s.; other cryptographic equipment, n.e.s.; and specially designed parts for the above equipment.

Controls for ECCN 6598F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: $0.

Processing Code: EE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

6599G Other electronic and precision instruments, including photographic equipment and film, n.e.s., and parts and accessories, n.e.s.

Controls for ECCN 6599G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical supplies.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM for photographic equipment/film, n.e.s.; E for all other items.

Reason for Control: Foreign policy.

Special Licenses Available: See Part 773.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

TECHNICAL NOTE: Instrumentation incorporating computing facilities that is controlled under ECCNs 1529A *cannot* be reclassified under ECCN 6599G even if the computing facility has been removed. Such instrumentation remains classified under 1529A, since the computing facility is essential to the product.

7599I Exposed and developed microfilm reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications including newspapers and periodicals, children's picture and painting books, music books, sheet music, and calendars; motion picture film and soundtrack, exposed and developed, and advertising printed matter exclusively related thereto.

Controls for ECCN 7599I

Unit: Report in "$ value."

Validated License Required: None.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Not applicable.

GROUP 6—METALS, MINERALS AND THEIR MANUFACTURES

NOTE: You need a validated export license to export or reexport technical data related to metals, minerals and their manufactures to destinations in Country Groups Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided,* That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

2603A Specially designed components and parts for ammunition; except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are controlled by the Office of Munitions Control, Department of State).

(Specify by name.)

Controls for ECCN 2603A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Australia, Japan, New Zealand, and members of NATO (except that there is no limit on exports to Canada); $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; foreign policy.

Special South Africa Controls: Specifically designed components and parts for ammunition defined in ECCN 3603A are subject to the Republic of South Africa embargo policy, and no technical data relating to these commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Foreign Policy Controls: 1. Foreign policy controls apply to exports of commodities defined in this ECCN to any destination except Australia, Japan, New Zealand, and members of NATO. Applications for validated licenses will generally be considered favorably on a case-by-case basis unless there is evidence that the exports would contribute significantly to the destabilization of the region to which the equipment is destined.

2. A validated export license is required for foreign policy purposes for export to the People's Democratic Republic of Yemen, Libya, and Syria (countries that have repeatedly provided support for acts of international terrorism).

Special Licenses Available: None.

3604A Zirconium metal, alloys and components.

Controls for ECCN 3604A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security; nuclear-proliferation.

Special Licenses Available: None.

List of Zirconium Metal, Alloys, and Compounds Controlled by ECCN 3604A

Zirconium metal; alloys containing more than 50% zirconium by weight; compounds in which the ratio of hafnium to zirconium is less than 1:500 parts by weight; and manufactures wholly thereof, *except:*

(a) Zirconium metal, alloys and compounds in shipments of 5 kg or less;

(b) Zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm, in shipments of 200 kg or less.

ADVISORY NOTE: (GFW Eligibility restricted to those Countries Listed in Supplement Nos. 2 or 3 to Part 773) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following commodities:

(a) Finished parts made of zirconium metal or alloys, specially designed for an identified civil research or power reactor facility, such as cladding tubes and plugs and separators therefor, liner tubes, thermal insulating tubes, pressure tubes, and calandria tubes, *Provided,* That:

(1) None of the parts contains fissile materials; and

(2) The importing country has agreed to the application of the Safeguards of the International Atomic Energy Agency (IAEA) in connection with the nuclear reactor facility;

(b) Contained zirconium metal, or parts made therefrom, in individual shipments not exceeding 100 kg, when intended for use in, or in support of, an identified civil research or power reactor facility, in connection with which it is contemplated that IAEA Safeguards would be applied.

3605A Nickel powder and porous nickel metal.

Controls for ECCN 3605A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

List of Nickel Powder and Porous Nickel Metal Controlled by ECCN 3605A

(a) Powder with a nickel purity content of 99.9% or more and a mean particle size of less than 10 micrometers measured by the ASTM B 330 standard and a high degree of particle size uniformity;

(b) Porous nickel metal produced from materials controlled for export by paragraph (a) of this List *except* single porous nickel metal sheets not exceeding 930 cm^2 intended for use in batteries for civil applications.

NOTE 1: Paragraph (b) refers to porous nickel metal manufactured from nickel powder defined in paragraph (a) that has been compacted and sintered to form a metal material with fine pores interconnected throughout the structure.

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of nickel powder in uncompacted powder form for non-nuclear civil applications.

3607A Lithium.

Controls for ECCN 3607A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security, nuclear non-proliferation.

Special Licenses Available: None.

List of Forms of Lithium Controlled by ECCN 3607A

(a) Metal, hydrides, or alloys containing lithium enriched in the 6 isotope to a concentration higher than the one existing in nature (7.5 percent on an atom percentage basis);

(b) Any other materials containing lithium enriched in the 6 isotope (including compounds, mixtures, and concentrates), *except lithium enriched in the 6 isotope incorporated in thermoluminescent dosimeters.*

3608A Hafnium of the following description: metal, and alloys and compounds of hafnium containing more than 60 percent hafnium by weight, and manufactures thereof, except shipments of the above having a hafnium content of 1 kilogram or less.

Controls for ECCN 3608A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

3609A Beryllium.

Controls for ECCN 3609A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: CM.

Reason for Control: National security, nuclear non-proliferation.

Special Licenses Available: None.

List of Forms of Beryllium Controlled by ECCN 3609A

Metal, alloys containing more than 50 percent of beryllium by weight, compounds containing beryllium, manufactures thereof, and waste and scrap, *except metal windows for X-ray machines; oxide shapes in fabricated or semi-fabricated forms specially designed for electronic component parts or as substrates for electronic circuits; shipments of 500 grams or less of beryllium having a purity of 99 percent or less, or 100 grams or less of beryllium having a purity of greater than 99 percent, provided that shipments exclude single crystals; and shipments of 5 kilograms or less of beryllium contained in compounds with a purity of less than 99 percent.*

1610A Metal alloys, metal alloy powder or alloyed materials.

Controls for ECCN 1610A

Unit: Report on "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security

Special Licenses Available: See part 773 of this subchapter.

List of Metal Alloys, Metal Alloy Powder or Alloyed Materials Controlled by ECCN 1610A

(a) Metal alloys, as follows, made from metal alloy powder or particulate material controlled by paragraph (b) of this ECCN 1610A:

(1) Nickel alloys with a stress-rupture life of 10,000 hours or longer at 923 K (650 °C) and at a stress of 550 MPa;

(2) Cobalt alloys with a stress-rupture life of 10,000 hours or longer at 923 K (650 °C) and at a stress of 400 MPa;

(3) Niobium alloys with a stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) and at a stress of 400 MPa;

(4) Titanium alloys with a stress-rupture life of 10,000 hours or longer at 723 K (450 °C) and at a stress of 200 MPa;

(5) Aluminum alloys with a tensile strength of:

(i) 240 MPa or more at 473 K (200 °C); or

(ii) 415 MPa or more at 298 K (25 °C);

(6) Magnesium alloys with a tensile strength of 345 MPa or more and a corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G-31 or national equivalents;

TECHNICAL NOTES: 1. The metal alloys in paragraph (a) of this ECCN 1610A are those containing a higher percentage by weight of the stated metal than of any other element.

2. Stress-rupture life should be measured in accordance with ASTM standard E-139 or national equivalents.

(b) Metal alloy powder or particulate material, as follows:

(1) Controlled by paragraph (a) of this ECCN 1610A;

(2) Made from any of the following composition systems:

(i) Nickel alloys (Ni-Al-X or Ni-X-Al);

(ii) Cobalt alloys (Co-Cr-X or Co-X-Cr);

(iii) Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

(iv) Titanium alloys (Ti-Al-X or Ti-X-Al);

(v) Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); *or*

(vi) Magnesium alloys (Mg-Al-X or Mg-X-Al); *and*

NOTE: X equals one or more alloying elements.

(3) Made in a controlled environment by any of the following processes:

(i) "Vacuum atomization";

(ii) "Gas atomization";

(iii) "Rotary atomization";

(iv) "Splat quenching";

(v) "Melt spinning" and "comminution";

(vi) "Melt extraction" and "comminution"; *or*

(vii) "Mechanical alloying";

(c) Alloyed materials, in the form of uncomminuted flakes, ribbons or thin rods produced in a controlled environment by "splat quenching", "melt spinning" or "melt extraction", used in the manufacture of metal alloy powder or particulate material controlled by paragraph (b) of this ECCN 1610A.

NOTE: This ECCN 1610A does not control metal alloys, metal alloy powder or alloyed materials for coating "substrates".

(For nickel aluminides containing 10 weight percent or more aluminum and titanium aluminides containing 12 weight percent or more aluminum, see ECCN 1672A.)

Definitions of Terms

Comminution—

A process to reduce a material to particles by crushing or grinding.

Gas atomization—

A process to reduce a molten stream of metal alloy to droplets of 500-micrometer diameter or less by a high-pressure gas stream.

Mechanical alloying—

An alloying process resulting from the bonding, fracturing and rebonding of elemental and master alloy powders by mechanical impact. Non-metallic particles may be incorporated in the alloy by addition of the appropriate powders.

Melt extraction—

A process to "solidify rapidly" and extract a ribbon-like alloy product by the insertion of a short segment of a rotating chilled block into a bath of a molten metal alloy.

Melt spinning—

A process to "solidify rapidly" a molten metal stream impinging upon a rotating chilled block, forming a flake, ribbon or rod-like product.

Rotary atomization—

A process to reduce a stream or pool of molten metal to droplets to a diameter of 500 micrometer or less by centrifugal force.

Solidify rapidly—

Solidification of molten material at cooling rates exceeding 1,000 K/sec.

Splat quenching—

A process to "solidify rapidly" a molten metal stream impinging upon a chilled block, forming a flake-like product.

Vacuum atomization—

A process to reduce a molten stream of metal to droplets of a diameter of 500 micrometer or less by the rapid evolution of a dissolved gas upon exposure to a vacuum.

2616A Gilding metal clad steel, munitions materials.

Controls for ECCN 2616A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 773.

1631A Magnetic metals of all types and of whatever form.

Controls for ECCN 1631A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Characteristics, Any One of Which Qualifies a Metal for Control Under ECCN 1631A

(a) Initial relative permeability: 120,000 or more and thickness 0.05 mm or less;

Technical Note: Measurement of initial permeability must be performed on the above specified materials that are fully annealed.

(b) Remanence: 98.5% or over of maximum magnetic flux for materials having magnetic permeability;

(c) Grain-oriented iron-silicon alloy sheets or strips of a thickness of 0.1 mm or less;

(d) Magnetostrictive alloys having either of the following characteristics:

(1) Saturation magnetostriction more than 5 × 10^{-4}; *or*

(2) Magnetomechanical coupling factor (k) more than 0.8;

(e) Amorphous alloy strips having both of the following characteristics:

(1) Composition having a minimum of 75 weight per cent of iron, cobalt or nickel; *and*

(2) Saturation magnetic induction (B_s) of 1.6 T or more, and either:

(i) Strip thickness of 0.02 mm or less; *or*

(ii) Electrical resistivity of 2 × 10^{-4} ohm. cm. or more.

4635B Pressure tube, pipe, and fittings therefor, of 8 inches or more inside diameter, having a wall thickness of 8 percent or more of the inside diameter and made of stainless steel, copper-nickel alloy, or other alloy steel containing 10 percent or more nickel and/or chromium.

Controls for ECCN 4635B

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V; $0 for all other destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

4638B Calcium containing both less than one tenth percent (0.001) by weight of impurities other than magnesium and less than 10 parts per million of boron.

Controls for ECCN 4638B

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

4654B Magnesium containing both less than one fiftieth percent (0.0002) by weight of impurities other than calcium and less than 10 parts per million of boron.

Controls for ECCN 4654B

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

1672A Nickel or titanium-based alloys in the form of aluminides, in crude or semi-fabricated forms, and scrap thereof.

Controls for ECCN 1672A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: None.

Nickel or Titanium Based Alloys Controlled by ECCN 1672A

Nickel or titanium-based alloys in the form of aluminides, as follows, in crude or semi-fabricated forms and scrap thereof:

(a) Nickel aluminides containing 10 weight percent or more aluminum;

(b) Titanium aluminides containing 12 weight percent or more aluminum.

1673A Artificial graphite having an apparent relative density of 1.90 or greater when compared with water at 60° F. (15.50° C.), except artificial graphite which has been impregnated or composited with inorganic materials for the purpose of improving only its electrical conductivity, its mechanical resistance or its mechanical friction properties; and electrical resistors, artificial loads for microwave applications, cable waveguide terminations, brush stock, special joints for electrodes, boats and crucibles and high density graphite optical elements.

Controls for ECCN 1673A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: None.

ADVISORY NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following forms of graphite:

(a) Pyrolitic graphite (*e.g.*, graphite made by vapor deposition at temperatures exceeding 2,732° F. (1,500° C.) in crude or semi-fabricated forms, the dimension of any one of which does not exceed 4 inches (10 cm) in any direction, in individual shipments not exceeding 55 pounds (25 kg);

(b) Non-pyrolitic graphite, having a relative density of less than 1.95 which has not been coated or composited with other elements or compounds to improve its performance at elevated temperatures or reduce its permeability to gases.

4674B Specialized packings made of phosphor bronze mesh designed for use in vacuum distillation towers, suitable for use in separating heavy from light water.

Controls for ECCN 4674B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V; $0 for all other destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

1675A "Superconductive" materials and composite conductors.

Controls for ECCN 1675A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Items Controlled by ECCN 1675A

(a) "Superconductive" materials of all types:

(1) Having a "critical temperature", at zero magnetic induction, of 9.85K (–263.3 °C) or higher; *and*

(2) In quantities of more than 25 g;

(b) "Superconductive" niobium-titanium wire not embedded in a metallic matrix with a cross section area of less than 3.14×10^{-4} mm^2 (i.e., 20 micrometre diameter for circular filaments);

(c) Composite conductors containing at least one "superconductive" constituent having a "critical temperature", at zero magnetic induction, of 9.3K (–263.85 °C) or higher, *except those that:*

(1) *Have "superconductive" filaments embedded in a copper or copper-based mixture matrix; and*

(2) *Fulfill either of the two following sets of characteristics:*

(i) *The "superconductive" constituent or filament:*

(A) *Has a cross section area of more than 3.14×10^{-4} mm^2 i.e., 20 micrometre diameter for circular filaments;*

(B) *Is either non-coated or insulated with*

(*1*) *Varnish;*

(*2*) *Glass fiber;*

(*3*) *Polyamide; or*

(*4*) *Polyimide; and*

(C) *Does not remain in the "superconductive" state when:*

(*1*) *Evaluated in sample lengths of less than 1 meter; and*

(*2*) *Exposed to a magnetic field with an induction of more than 12 tesla at a temperature of 4.2K (–268.95 °C); or*

(ii) *The composite conductor contains:*

(A) *"Superconductive" niobium-titanium wire with a cross section area of more than 9.5×10^{-5} mm^2 i.e., 11 micrometer diameter for circular filaments; and*

(B) *A total mass, i.e., including the mass of the matrix, not exceeding 10 kg.*

TECHNICAL NOTES: Definition of terms used in this ECCN 1675A

1. *"Superconductive"*. Materials (i.e. metals, alloys or compounds) that can lose all electrical resistance, i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating.

NOTE: The "superconductive" state of a material is individually characterized by a "critical temperature", a critical magnetic field, which is a function of temperature, and a critical current density which is, however, a function of both magnetic field and temperature.

2. *"Critical temperature"*. "Critical temperature" (sometimes referred to as the transition temperature) of a specific "superconductive" material—the temperature at which the material loses all resistance to the flow of direct current.

4675B Cylindrical tubing, raw, semifabricated, or finished forms, made of aluminum alloy (7000 series) or maraging steel or high-strength titanium alloys (e.g., Ti-6 Al-4 V, etc.).

Controls for ECCN 4675B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Characteristics of Cylindrical Tubing Controlled by ECCN 4675B

(a) Wall thickness of ½ inch, or less;
(b) Diameter of 3 inches or more.

4676B Cylindrical rings, or single convolution bellows, made of high-strength steels.

Controls for ECCN 4676B:

Unit: Report in "$ value."

Validated License Required: Country Groups QTVSWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Characteristics of Cylindrical Rings of Single Convolution Bellows, Made of High-Strength Steels Controlled by ECCN 4676B

(a) Tensile strength of greater than or equal to 150,000 psi;

(b) Wall thickness of 3 millimeters or less;

(c) Diameter of 3 inches or more.

4677B Cylindrical discs, in raw, semifabricated, or finished form.

Controls for ECCN 4677B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $ 0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

List of Characteristics of Cylindrical Discs, in Raw, Semifabricated, or Finished Form Controlled by ECCN 4677B

(a) Having a ½- to 2-inch peripheral lip;

(b) Having a diameter of 3 inches or more;

(c) Made of maraging steel or aluminum alloy (7000 series).

4678B Corrosion-resistant sensing elements of nickel, nickel alloys, phosphor bronze, stainless steel, or aluminum specially designed for use with equipment which measures pressures to 100 Torr or less.

Controls for ECCN 4678B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export of commodities defined in this ECCN to the countries listed in Supp. No. 2 or 3 to Part 773.

GLV $ Value Limit: $ 0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: A Distribution License is available for shipments to countries listed in Supp. No. 2 or 3 to Part 773. No other special license is available for commodities defined in this ECCN.

5680B Police helmets, leg irons, shackles, handcuffs, thumbcuffs, thumbscrews and saps, and specially designed implements of torture.

Controls for ECCN 5680B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export of commodities defined in this ECCN to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $ 0 for all destinations.

Processing Code: CM.

Reason for Control: Crime control (foreign policy).

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) controlled by this ECCN, except to Australia, Japan, New Zealand, and members of NATO.

Special Licenses Available: None.

4698B Depleted uranium (any uranium containing less than 0.711% of the isotope (U-235), the following only: shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

Controls for ECCN 4698B

Unit: Report in "lbs." or "Kgs."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export of the commodities defined in this ECCN to the countries listed in Supp. No. 2 or 3 to Part 773.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

NOTE: Depleted uranium in fabricated forms for use in munitions requires export authorization from the U.S. Department of State, Office of Munitions Control (see Supp. No. 2 to Part 770). All forms of depleted uranium not specifically described in this ECCN or in ECCN 4699G, and not controlled by the Department of State, require export authorization from the Nuclear Regulatory Commission (see 10 CFR, Part 110).

4699G Depleted uranium (any uranium containing less than 0.711% of the isotope U-235) fabricated into commodities solely to take advantage of high density unrelated to radioactivity (e.g., aircraft, ship or other counterweights); and shipments of 1,000 kilograms or less in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

Controls for ECCN 4699G

Unit: Report in "lbs." or "Kgs."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: See Part 773.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

NOTE: Depleted uranium in fabricated forms for use in munitions requires export authorization from the U.S. Department of State, Office of Munitions Control (see Supp. No. 2 to Part 770). All forms of depleted uranium not specifically described in this ECCN or in ECCN 4698B, and not controlled by the Department of State, require export authorization from the Nuclear Regulatory Commission (see 10 CFR, Part 110).

6699G Other metals, minerals, and their manufactures, n.e.s.

Controls for ECCN 6699G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical supplies.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: See Part 773.

Special South Africa Controls: A validated license is required for export to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

NOTE: Spherical aluminum powder with an average particle size of 100 micrometer diameter or less and a purity of 97% or greater; aluminum-magnesium alloy powder; and aluminum alloy plates, sheets and other wrought forms of Temper H alloy and all 5083 alloys, *except "O" temper form*, require export authorization from the U.S. Department of State, Office of Munitions Control. See Supp. No. 2 to Part 770.

GROUP 7—CHEMICALS, METALLOIDS, PETROLEUM PRODUCTS AND RELATED MATERIALS

NOTE: You need a validated export license to export or reexport technical data related to chemicals, metalloids, petroleum products and related materials to destinations in Country Groups Q, S, W, Y, or Z. You may use General License GTDR for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided*, That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government departments and agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

1701A Lead azide and primary explosives or priming compositions (mixtures) containing azides and/or azide compounds or complexes (for example, orthofluorophenyl azide, silver chlorazide, cuprammonium azide).

Controls for ECCN 1701A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: None.

2708A Explosives, propellants, and fuels as described in this entry.

Controls for ECCN 2708A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: None.

List of Charges, Explosives, Propellants, and Fuels Controlled by ECCN 2708A

(a) Ethyl and Methyl centralites,

(b) NN-Diphenylurea (unsymmetrical diphenylurea),

(c) Methyl-NN-diphenylurea (methyl unsymmetrical diphenylurea),

(d) Ethyl-NN-diphenylurea (ethyl unsymmetrical diphenylurea),

(e) Ethyl phenyl urethane,

(f) Diphenyl urethane,

(g) Diortho tolyl-urethane,

(h) 2-Nitrodiphenylamine,

(i) p-Nitromethylaniline,

(j) 2,2′ Dinitropropanol,

(k) Bis (2,2′ dinitropropyl) formal and acetal,

(l) 3-Nitraza-1,5 pentane diisocyanate,

(m) Guanidine nitrate, and

(n) Hydrogen peroxide in concentrations of 85%.

(o) Charges specially designed for civilian applications, containing military explosives.

TECHNICAL NOTE: Military high explosives are solid, liquid or gaseous substances or mixtures of substances that, in their application as primary, booster, or main charges in warheads, demolition and other military applications, are required to detonate.

ADVISORY NOTE: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for the shipment of certain explosive substances and mixtures in reasonable quantities for civilian or industrial purposes when made into cartridges or charges of an exclusively civilian or industrial nature, such as propellants for sporting purposes or shooting gallery practice; cartridges for rivetting guns; and explosive charges for agricultural purposes, public works, mines, quarries or oil-well drilling. The following are the substances or mixtures to which this procedure applies:

(a) Nitrate-based (40 per cent or more) and provided they do not contain more than 40 percent nitroglycol/

nitroglycerin or no more than 16 percent TNT:

(b) Nitrocellulose with a nitrogen content of over 12.2 percent;

(c) Nitroglycerin;

(d) Single base nitrocellulose;

(e) Sodium azide and other inorganic azides.

3709A Beryllium oxide ceramic and refractory tubes, pipes, crucibles, and other shapes in semi-fabricated or fabricated form, except forms specially designed for electronic component parts or as substrates for electronic circuits.

Control for ECCN 3709A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security, and nuclear non-proliferation. Nuclear non-proliferation controls do not apply to those countries listed in Supplement No. 2 or Supplement No. 3 to Part 773.

Special Licenses Available: None.

1710A Fluids and lubricating materials.

Controls for ECCN 1710A

Unit: Report in "barrels."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See part 773 of this subchapter.

List of Fluids and Lubricating Materials Controlled by ECCN 1710A

(a) Hydraulic fluids that contain any of the following compounds or materials as their principal ingredients:

(1) Highly refined super-dewaxed petroleum (mineral) oils, synthetic hydrocarbon oils or silahydrocarbon oils, having all of the following characteristics:

(i) Flash point exceeding 477 K (204 °C);

(ii) Pour point 239 K (−34 °C) or lower;

(iii) Viscosity index 75 or more; *and*

(iv) Thermal stability 616 K (343 °C);

NOTE: For the purpose of this paragraph (a)(1), silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

(2) Chlorofluorocarbons having all of the following characteristics:

(i) No flash point;

(ii) Autogenous ignition temperature exceeding 977 K (704 °C);

(iii) Pour point 219 K (−54 °C) or lower;

(iv) Viscosity index 80 or more; *and*

(v) Boiling point 473 K (200 °C) or higher; *or*

NOTE: For the purpose of this paragraph (a)(2), chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

(3) Monomeric or polymeric forms of perfluoropolyalkylethertriazines or perfluoroaliphatic ethers;

(b) Lubricating materials containing any of the following compounds or materials as their principal ingredients:

(1) Monomeric or polymeric forms of perfluoropolyalkylethertriazines or perfluoroaliphatic ethers;

(2) Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof;

(3) Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

(4) Fluorinated silicone fluids with kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

(c) Damping or flotation fluids made of at least 85% of any of the following compounds or materials:

(1) Dibromotetrafluoroethane having a purity exceeding 99.8% and containing less than 25 particles of 200 micrometer or larger in size per 100 ml;

(2) Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

(3) Polybromotrifluoroethylene;

(d) Cooling fluids made of at least 85% of any of the following compounds or materials;

(1) Monomeric or polymeric forms of perfluoropolyalkylethertriazines or perfluoroaliphatic ethers;

(2) Perfluoroalkylamines; *or*

(3) Perfluorocycloalkanes or perfluoroalkanes with all of the following characteristics:

(i) Density at 298 K (25 °C) of 1.5 g/ml or more;

(ii) In a liquid state at 273 K (0 °C); and

(iii) Containing 60% or more by weight of fluorine.

TECHNICAL NOTE: For the purpose of this ECCN 1710A:

(a) Flash point is determined using the Cleveland Open Cup Method described in ASTM D-92 or national equivalents;

(b) Pour point is determined using the method described in ASTM D-97 or national equivalents;

(c) Viscosity index is determined using the method described in ASTM D-2270 or national equivalents;

(d) Thermal stability is determined by the following test procedure or national equivalents: Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M-10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn). The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours. The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

(1) The loss in weight of each ball is less than 10 mg/mm² of ball surface;

(2) The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and

(3) The total acid or base number is less than 0.40;

(e) Autogenous ignition temperature is determined using the method described in ASTM E-659 or national equivalents.

NOTE 1: Nothing in this Note permits the export of technical data. This ECCN 1710A does not control the shipment of up to 19 liters of polychlorotrifluoroethylene-based lubricating oils.

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of cooling fluids controlled by paragraph (d) of this ECCN 1710A for civil end-uses.

3711A Chlorine trifluoride, except shipments of 5 kilograms or less.

Controls for ECCN 3711A

Unit: Report in "pounds" or "kilograms."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security and nuclear non-proliferation.

Special Licenses Available: None.

3712A Wet-proofed platinized catalysts specially designed or prepared for promoting hydrogen isotope exchange between hydrogen and water for the recovery of tritium from heavy water or for heavy water production.

Controls for ECCN 3712A

Unit: Report in "kilograms" or "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

1715A Boron, as described in this entry.

Controls for ECCN 1715A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Propellants and constituents as follows: High energy density fuels, such as Boron Slurry, having an energy density of 40 × 10^6 joules/kg or greater.

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation; foreign policy. Nuclear controls do not apply to paragraphs (b)(2) and (b)(3). Foreign policy controls apply for nuclear weapons delivery purposes to propellants and constituents as follows: high energy density fuels such as Boron Slurry, having an energy density of 40 x 10^6 joules/kg or greater.

Special Licenses Available: None available for paragraphs (a) and (b)(1) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1715A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Boron Controlled by ECCN 1715A

(a) Boron element (metal) in all forms; and

(b) Boron compounds, mixtures and composites containing 5 percent or more of boron, *except pharmaceutical specialties packaged for retail sale*, as follows:

(1) Non-ceramic boron-nitrogen compounds (*e.g.*, borozanes, borozines and boropyrazoyls);

(2) Boron hydrides (*e.g.*, boranes), *except* sodium boron hydride, potassium boron hydride, monoborane, diborane and triborane;

(3) Organoboron compounds, including metalloorganoboron compounds.

4720B Radioisotopes, cyclotron-produced or naturally occurring, except those having an atomic number 3 through 83, and compounds and preparations thereof.

(Specify by name and isotope number.)

Controls for ECCN 4720B

Unit: Report radioisotopes in "Millecuries."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $500 for Country Groups T & V; $200 for Country Group Q; $0 for all other destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

4721B Helium isotopically enriched in the helium-3 isotope, in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device.

Controls for ECCN 4721B

Unit: Report helium in "liters."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $5,000 for Country Groups T & V and Canada; $0 for all other destinations.

Processing Code: CM.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

1733A Base materials, non-"composite" ceramic materials, ceramic-ceramic "composite" materials and precursor materials, as follows, for the manufacture of high temperature fine technical ceramic products.

Controls for ECCN 1733A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all items in subparagraphs (d)(1), (2), and (3) to all destinations; $5,000 for all other items to Country Groups T & V, except $0 to the People's Republic of China; $0 for all items to all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Base Materials, Non-"Composite" Ceramic Materials, Ceramic-Ceramic "Composite" Materials and Precursor Materials, as Follows, for the Manufacture of High Temperature Fine Technical Ceramic Products Controlled by ECCN 1733A

(a) Base materials having all the following characteristics:

(1) Any of the following compositions:

(i) Single or complex oxides of zirconium, and complex oxides of silicon and aluminum;

(ii) Single or complex borides of zirconium;

(iii) Single or complex carbides of silicon or boron; *or*

(iv) Single or complex nitrides of silicon, boron, aluminum, or zirconium;

(2) Total metallic impurities, excluding intentional additions, of less than:

(i) 1,000 ppm for single oxides or carbides; *or*

(ii) 5,000 ppm for complex compounds, single borides or single nitrides; *and*

(3) Average particle size less than or equal to 5 micrometers and no more than 10% of the particles larger than 10 micrometers.

NOTE: For zirconia, these limits are 1 micrometer and 5 micrometers, respectively.

(b) Non-"composite" ceramic materials in crude or semi-fabricated form composed of the materials controlled by paragraph (a) above, except abrasives;

(c) Ceramic-ceramic "composite" materials containing finely dispersed particles or phases or any non-metallic fibrous or whisker-like materials, whether externally introduced or grown in situ during processing, where the following materials form the host "matrix":

(1) All oxides, including glasses;

(2) Carbides or nitrides of silicon or boron;

(3) Borides or nitrides of zirconium or borides, carbides or nitrides of hafnium; *or*

(4) Any combination of the materials enumerated in paragraphs (c) (1) through (3) above.

NOTE: This paragraph (c) does not control manufactured products or components not controlled elsewhere in the Commodity Control List.

(d) Precursor materials, *i.e.* special-purpose polymeric or metallo-organic materials for producing any phase or phases of the materials covered by paragraphs (b) or (c) above, as follows:

(1) Polycarbosilanes and polydiorganosilanes (for producing silicon carbide);

(2) Polysilazanes (for producing silicon nitride); or

(3) Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components).

NOTES: 1. For compounds of hafnium, see also § 770.10(e) and ECCN 3608A.

2. For compounds of tantalum, see also ECCN 1760A.

3. For carbon-carbon materials, see ECCN 1763A.

TECHNICAL NOTES: Definition of terms used in this ECCN 1733A:

1. A "matrix" is defined as a substantially continuous phase that fills the space between particles, whiskers or fibers.

2. A "composite" is defined as a "matrix" and an additional phase or additional phases consisting of particles, whiskers, fibers or any combination thereof, present for a specific purpose or purposes.

1746A Non-fluorinated polymeric substances and manufactures thereof.

Controls for ECCN 1746A

Unit: Report in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: For police-model helmets containing 50% or more aromatic polyamide fiber by value, the $ value limit is $200 only to Australia, Japan, New Zealand and members of NATO and $0 to all other destinations. For items other than such police-model helmets, the $ value limit is $200 to Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General License GCT: Propellants and constituents as follows: Polymeric substances, specifically carboxyl terminated polybutadienes (CTPB) and hydroxyl terminated polybutadienes (HTPB) controlled by paragraphs (k)(1) and (k)(2).

Processing Code: CM.

Reason for Control: National security; foreign policy. Foreign policy controls apply, for crime control purposes, to police-model helmets and, for nuclear weapons delivery purposes (§ 776.18), to propellants and constituents as follows: polymeric substances, specifically, carboxyl-terminated polybutadiene (CTPB) and hydroxyl-terminated polybutadiene (HTPB).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities controlled by ECCN 1746A.

Special Foreign Policy Controls: Foreign policy controls apply to police-model helmets controlled by this ECCN to any destination except Australia, Japan, New Zealand and members of NATO. (See ECCN 5999B for foreign policy controls on all other police model helmets.)

TECHNICAL DATA: Export of technical data related to police-model helmets containing 50% or more aromatic polyamide fiber by value require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO. Exports of technical data related to butadiene polymers require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Non-Fluorinated Polymeric Substances and Manufactures Controlled by ECCN 1746A

Non-fluorinated polymeric substances, as follows, and manufactures thereof:

(a) Polyimides (including maleimides);

NOTE: This paragraph (a) does not control fully cured polyimide or polyimide-based film, sheet, tape or ribbon having a maximum thickness of 0.254 mm, whether or not coated or laminated with heat or pressure sensitive resinous substances of an adhesive nature, that contain no fibrous reinforcing materials, and that have not been coated or laminated with carbon, graphite, metals or magnetic substances.

(b) Polybenzimidazoles;

(c) Aromatic polyamides, including heterocyclic aromatic polyamides characterized as aromatic due to the presence of a benzene ring;

(d) Polybenzothiazoles;

(e) Polyoxadiazoles;

(f) Polyphosphazenes (polyphosphonitriles);

(g) Polystyrylpyridine (P.S.P.);

(h) Thermoplastic liquid crystal copolymers composed of:

(1) Either of the following:

(i) Phenylene, biphenylene or naphthalene; *or*

(ii) Methyl, tertiary-butyl or phenyl substituted phenylene, biphenylene or naphthalene; *and*

(2) Any of the following acids:

(i) Terephthalic acid;

(ii) 6-hydroxy-2 naphthoic acid; *or*

(iii) 4-hydroxybenzoic acid;

NOTE: This paragraph (h) does not control manufactures of thermoplastic liquid crystal copolymers having both of the following characteristics:

(a) A tensile modulus of less than 15 GPa in any direction; *and*

(b) Specially designed for non-aerospace, non-electronic civil applications.

(i) Polybenzoxozoles;

(j) Polyarylene ether ketones as follows:)

(1) Polyether ether ketone (PEEK);

(2) Polyether ketone ketone (PEKK);

(3) Polyether ketone (PEK);

(4) Polyether ketone ether ketone ketone (PEKEKK);

(k) Butadiene polymers, as follows:

(1) Carboxyl terminated polybutadienes (CTPB); Hydroxyl terminated polybutadienes (HTPB); Thiol terminated polybutadienes (TTPB); Vinyl terminated polybutadienes (VTPB); Cyclized 1-2 polybutadiene;

(2) Moldable copolymers of butadiene and acrylic acid;

(3) Moldable terpolymers of butadiene, acrylonitrile and acrylic acid or any of the homologs of acrylic acid;

(l) Carboxyl terminated polyisoprene.

(m) Polyarylene ketones;

(n) Polyarylene sulphides, *except* polyphenylene sulphide.

NOTE: This ECCN 1746A does not control manufactured products or components not controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR part 110 or by 10 CFR part 810.

1754A Fluorinated compounds, materials and manufactures thereof.

Controls for ECCN 1754A

Unit: Report wire and cable in "feet," fluorocarbon compounds and other manufactures in "pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Fluorinated Compounds, Materials and Manufactures Controlled by ECCN 1754A

(a) Polymeric materials and intermediates, as follows, when unprocessed:

(1) Fluoroelastomeric compounds where the polymer backbone consists of at least 95% of:

(i) A combination of two or more of the following monomers:

(A) Tetrafluoroethylene;

(B) Vinylidene fluoride;

(C) Hexafluoropropylene;

(D) Bromotrifluoroethylene;

(E) Iodotrifluoroethylene;

(F) Perfluoromethylvinylether;

(G) Perfluoropropoxypropylvinylether;

except the copolymer of vinylidene fluoride and hexafluoropropylene, or the terpolymer of vinylidene fluoride, hexafluoropropylene and tetrafluoroethylene;

(ii) A copolymer of tetrafluoroethylene and propylene; *or*

(iii) A terpolymer of tetrafluoroethylene, vinylidene fluoride and propylene;

(2) Copolymers of vinylidene fluoride having 75% or more beta crystalline structure without stretching;

(3) Fluorinated silicon rubbers, and intermediates for their production, containing 30% or more of combined fluorine;

(4) Fluorinated polyimides, and hexafluoroacetone and other intermediates for their production, containing 30% or more of combined fluorine;

(5) Fluorinated phosphazene elastomers, and intermediates for their production, containing 30% or more of combined fluorine;

(b) Manufactures, as follows:

(1) Electric wire and cable coated with or insulated with materials in paragraph (a)(1)(ii) or (a)(1)(iii) of this ECCN 1754A, *except* oil well logging cable;

(2) Seals, gaskets, rods, sheets, sealants or fuel bladders made of more than 50% of any of the materials in paragraph (a)(1), (a)(3), (a)(4), or (a)(5) of this ECCN 1754A, specially designed for aerospace or aircraft use;

(3) Piezoelectric polymers and copolymers made from vinylidene fluoride having both of the following characteristics:

(i) In sheet or film form; *and*

(ii) With a thickness of more than 200 micrometer;

(4) Reinforced tubing (including connectors and fittings for use with such tubing) incorporating coagulated dispersion grades of polytetrafluoroethylene, copolymers of tetrafluoroethylene and hexafluoropropylene, or any of the fluorocarbon materials controlled by paragraph (a)(1) of this ECCN 1754A and designed for operating (working) pressures of 21 MPa or more, whether or not specially processed to make the flow surfaces electrically conductive.

1757A Compounds and materials as described in this entry.

Controls for ECCN 1757A

Unit: Report in "number."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of Compounds and Materials Controlled by ECCN 1757A

Compounds and materials, as follows:

(a) Monocrystalline silicon in the form of ingots (rods), slices or wafers thereof having a resistivity of more than 1,000 ohm-cm;

(b) Gallium of a purity equal to or more than 99.9999% and gallium III/V compounds of any purity level, *except:*

(1) Gallium phosphide; *or*

(2) Other gallium III/V compounds having all of the following characteristics:

(i) Dislocation density (etch pit density—EPD) exceeding 100 per mm^2;

(ii) Carrier concentration exceeding 1×10^{14} per mm^3; *and*

(iii) Carrier mobility less than 0.3 m^2/V. sec.;

(c) Indium of a purity more than 99.9995% and III 0.3 m^2/V. sec. indium compounds contain more than 1% indium;

(d) Hetero-epitaxial materials consisting of a monocrystalline insulating "substrate" epitaxially layered with silicon, III/V compounds of gallium or indium or II/VI compounds of sulphur, selenium or tellurium;

TECHNICAL NOTES: 1. III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (gallium arsenide, gallium-aluminium arsenide, indium phosphide, etc.).

2. II/VI compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIB and VIA of Mendeleyev's periodic classification table (cadmium telluride, cadmium-mercury telluride, cadmium-zinc telluride, etc.)

(e) Elemental Cadmium (Cd) and Tellerium (Te) of purity levels equal to or more than 99.9995% and cadmium terullide (CdTe) compounds of a purity level equal to or more than 99.99% or single crystals of cadmium terullide (CdTe) of any purity level;

(f) Rods of polycrystalline silicon having either of the following characteristics:

(1) Boron impurity concentration (P-type) equal to or less than 0.052 parts per thousand million atomic; *or*

(2) P-type resistivity equal to or more than 5,000 ohm.cm;

TECHNICAL NOTE: Purity verified in accordance with ASTM F574-83 standard or equivalents, and resistivity measured in accordance with ASTM F43-83 standard or equivalents (see also ASTM F723-82 standard for the conversion between resistivity and density of doping agents).

(g) Compounds having a purity level based upon the amount of the primary constituent of 99.5% or more and used as the silicon source in the deposition of epitaxial layers of silicon, silicon oxide or silicon nitride;

NOTE: This paragraph (g) controls Dichlorosilane ($SiCl_2H_2$) having a purity level of 97% or more.

(h) Single crystal sapphire substrates;

(i) Boron oxide (B_2O_3) in powder or cast form with a purity of 99.9% or more, containing 1,000 or less parts per million of water;

(j) Resist materials as follows:

(1) Negative type resists, optimized for photolithography at a wavelength of less than 350 nm;

(2) Positive type resists optimized for photolithography at a wavelength of less than 370 nm;

NOTE: This paragraph (j)(2) does not control positive type resists not optimized for a specific wavelength.

(3) All resists for use with electron beams or ion beams with a sensitivity of 50 microcoulomb/cm^2 or less;

(4) All resists for use with X-rays with a senstitivity of 250 mJ/cm^2 or less; *or*

(5) All resists optimized for surface imaging technologies including silyated resists; *or*

(6) Image reversal resists;

TECHNICAL NOTE: Silyation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.

(k) Monocrystalline lithium niobate;

(l) Metallo-organic compounds of beryllium, magnesium, zinc, cadmium mercury, aluminum, gallium, indium, phosphorus, arsenic or antimony having a purity (metal basis) of 99.999% or less;

(m) Hydrides of phosphorus, arsenic, antimony, selenium or tellurium having a purity of 99.999% or more, even diluted in neutral gases, except those with the addition of 20% molar or more of rare gases or hydrogen.

(ADVISORY) NOTE FOR THE PEOPLE'S REPUBLIC OF CHINA: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of:

(a) Polycrystalline silicon;

(b) Positive resists with a spectral response not optimized for use below 365 nm and not controlled by paragraphs (j)(3), (j)(4), or (j)(5) of this subchapter.

1759A "Syntactic foam" for underwater use and microspheres.

(Syntactic foam consists of hollow plastic or glass spheres less than 100 micrometers in diameter uniformly embedded in a resin matrix.)

For deep submergence vehicles, see ECCN 1418A.

Controls for ECCN 1759A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

List of "Syntactic Foam" for Underwater Use and Microspheres, as follows, Controlled by ECCN 1759A

(a) "Syntactic foam" as follows:

(1) Designed for marine depths exceeding 1000 meters; *or*

(2) With a density less than 0.561 g/cm³ (35 lb/cu ft) *except that designed for use at marine depths less than 100 meters;*

(b) Hollow microspheres (microballoons), having all of the following characteristics, for use in "syntactic foam"

(1) Made from glass or plastic;

(2) A true particle density of more than 0.16 g/cm³ (10 lb/cu ft) and less than 0.41 g/cm³ (26 lb/cu ft);

(3) A bulk density of more than 0.088 g/cm³ (5.5 lb/cu ft) and less than 0.23 g/cm³ (14.4 lb/cu ft);

(4) A compressive strength more than 2.8 MPa (400 psi);

(5) A particle size range or 20 to 200 micrometre; *and*

(6) A floater content of at least 94% by volume.

TECHNICAL NOTE: Definition of Terms used in the ECCN 1759A. 1: "Syntactic foam" is defined as hollow spheres of plastic or glass embedded in a resin matrix.

(ADVISORY) NOTE 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "syntactic foam" controlled by paragraph (a) above, provided it fulfills any of the following sets of conditions:

(a) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 300 meters;

(2) To be used in manned autonomous underwater vehicles excepted from export control; *and*

(3) To be installed by the supplier;

(b) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 300 meters; *and*

(2) Shaped or preshaped and to be used in civil offshore drilling or production equipment; *or*

(c) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 300 meters;

(2) To be used in manned autonomous underwater vehicles excepted from export control; *and*

(3) To be installed by the supplier.

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of microspheres controlled by paragraph (b) above, for civil uses other than underwater applications.

1763A Fibrous and filementary materials that may be used in organic "matrix," metallic "matrix" or carbon "matrix" composite structures or laminated and "specially designed software" therefor.

NOTE: For 'specially designed software', see Supp. No. 3 to Part 779.

Controls for ECCN 1763A

Unit: Report in "Pounds."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Commodities Not Eligible for General Licenses GCT or GDR: "Fibrous and filamentary materials" and resin or pitch-impregnated fibers controlled by paragraphs (a), (b), or (c) of this ECCN and "composite" structures controlled by paragraph (d) of this ECCN when specifically designed for military, stealth or space applications.

Processing Code: CM.

Reason for Control: National security; nuclear non-proliferation.

Special Licenses Available: None.

List of Materials Controlled by ECCN 1763A

(a) "Fibrous and filamentary materials" with "specific modulus" exceeding 4×10^6m and "specific tensile strength" exceeding 7.62×10^4 m;

(b) "Fibrous and filamentary materials" having both of the following characteristics:

(1) "Specific modulus" greater than 2.54×10^6m (1×10^8 in.); *and*

(2) Melting or sublimation point higher than 1,922 K (1,649°C) (3,000°F) in an inert environment, *except:*

(i) Carbon fibers having a "specific modulus" less than 5.08×10^6 m (2×10^8

in.) and a "specific tensile strength" less than 2.54×10^4 m (1×10^6 in.);

(ii) Discontinuous multiphase polycrystalline alumina fibers in chopped fiber or random mat form, containing 3% by weight or more silica, having a "specific modulus" less than 10×10^6 m (3.92×10^8 inches);

(iii) Molybdenum and molybdenum alloy fibers;

(iv) Discontinuous ceramic fibers having their melting point or sublimation point lower than 2,043 K (1,770°) in an inert environment;

(c) Resin or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms) or "carbon fiber preforms" made with materials controlled by paragraphs (a) or (b) above;

(d) "Composite" structures, laminates and manufactures thereof for products and components made either with an organic "matrix", a carbon "matrix" or a metal "matrix" utilizing materials controlled by paragraphs (a), (b) or (c) above;

NOTE: This paragraph (d) does not control manufactured products or composites not controlled elsewhere in the Commodity Control List.

(e) [Reserved]

(For equipment used for the production of materials controlled by this ECCN 1763A, see ECCNs 1312A and 1357A; for coating technical data, see supplement No. 4 to part 779 of this subchapter.)

NOTE 1: Nothing in the following permits the export of technical data. Paragraphs (a) and (b) of this ECCN 1763A do not control carbon fibers having both of the following characteristics:

(a) "Specific modulue" less than 11.43×10^6 m; *and*

(b) "Specific tensile strength" less than 10.16×10^4 m.

(ADVISORY) NOTE 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of polyethylene fiber controlled by paragraph (a) of this ECCN 1763A to bona fide civil end-users for non-military, non-aerospace end-use.

Definitions of Terms:

Carbon fiber perform—

An ordered arrangement of uncoated or coated fibers intended to constitute a framework of a part before the "matrix" is introduced to form a "composite".

Composite

A "matrix" and an additional phase or additional phases consisting of particles, whiskers, fibers or any combination thereof, present for a specific purpose or purposes.

Fibrous and filamentary materials—

The term "fibrous and filamentary materials" includes:

(a) Continuous monofilaments;

(b) Continuous yarns and rovings;

(c) Tapes, fabrics, random mats and braids;

(d) Chopped fibers, staple fibers and coherent fiber blankets;

(e) Whiskers, either monocrystalline or polycrystalline, of any length;

(f) Aromatic polymide pulp.

Matrix—

A substantially continuous phase that fills the space between particles, whiskers or fibers.

Preforms—

(See "carbon fiber preforms", "optical fiber preforms".)

Specific modulus—

Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of 296±2) K ((23±2)° and a relative humidity of (50±5) %.

Specific tensile strength—

Ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) ((23±2) °C) and relative humidity of (50±5) %.

1767A Preforms of glass or of any other materials specially designed for the fabrication of optical fibers covered by ECCN 1526A (c) and (d).

(Optical fiber preforms are defined as bars, ingots, or rods of glass, plastic or other materials which have been specially processed for use in fabricating optical fibers. The characteristics of the preform determine the basic parameters of the resultant drawn optical fibers.)

Controls for ECCN 1767A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 773.

(Advisory) Note: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY for the shipment of preforms specially designed for multimode optical fibers only optimized to operate for communications purposes at 850 nanometers.

Advisory Note (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fiber preforms specially designed for the manufacture of silicon-based optical fibers, provided that they are designed to produce non-militarized silicon-based optical fibers that are optimized to operate at a wavelength of 1,350 nm or less.

778B Inorganic chemicals.

Controls for ECCN 4778B

Unit: Report unit of quantity for each commodity as specified in Supp. No. 2 to Part 777.

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: SS.

Reason for Control: Short supply.

Special Licenses Available: See Part 773.

List of Inorganic Chemicals Controlled by ECCN 4778B

Ammonia, anhydrous or in aqueous solution; carbon dioxide; carbon monoxide; helium and mixtures thereof; hydrogen; and inorganic chemicals listed in Supp. No. 2 to Part 777.

(See § 771.16) for special provisions regarding shipments under General Licenses *G–NNR*.

81B Crude petroleum, including reconstituted crude petroleum, tar sands and crude shale oil listed in Supp. No. 2 to Part 777.

Controls for ECCN 4781B

Unit: Report in "barrels."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations, including Canada.

Processing Code: SS.

Reason for Control: Short supply and the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440, October 2, 1986).

Special Licenses Available: None.

Special South Africa Controls: No crude oil covered by this ECCN may be exported to the Republic of South Africa, or reexported to South Africa by a U.S. national (see § 785.4(a)(13)).

4782B Other petroleum products listed in Supp. No. 2 to Part 777.

(See §§ 771.16 and 771.5(d) for special provisions regarding shipments under General Licenses (*G–NNR* and *GLV.*)

Controls for ECCN 4782B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $2,000 for Country Groups Q, T and V, except $0 for the Republic of South Africa; $0 for all other destinations.

Processing Code: SS.

Reason for Control: Short supply and the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440, October 2, 1986).

Special Licenses Available: None.

Special South Africa Controls: No refined petroleum products covered by this ECCN may be exported to the Republic of South Africa, or reexported to South Africa by a U.S. national (see § 785.4(a)(13)).

4783B Natural gas liquids and other natural gas derivatives listed in Supp. No. 2 to Part 777.

(See §§ 771.16 and 771.5(d) for special provisions regarding shipments under General Licenses *G–NNR* and *GLV.*)

Note: Natural gas and liquefied natural gas (L.N.G.) and synthetic natural gas commingled with natural gas require export authorization from the U.S. Department of Energy. See § 770.10(g).

Controls for ECCN 4783B

Unit: Report in "barrels."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $2,000 for Country Groups Q, T and V, except $0 for the Republic of South Africa; $0 for all other destinations.

Processing Code: SS.

Reason for Control: Short supply and the Comprehensive Anti-Apartheid

Act of 1986 (Pub. L. 99-440, October 2, 1986).

Special Licenses Available: None.

Special South Africa Controls: No refined petroleum products covered by this ECCN may be exported to the Republic of South Africa, or reexported to South Africa by a U.S. national (see § 785.4(a)(13)).

4784B Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) listed in Supp. No. 2 to Part 777.

(See §§ 771.16 and 771.5(d) for special provisions regarding shipments under General Licenses *G-NNR* and *GLV*.)

Controls for ECCN 4784B

Unit: Report in "millions of cubic feet."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $1,000 for Canada and Country Groups Q, T and V, except $0 for the Republic of South Africa; $0 for all other destinations.

Processing Code: SS.

Reason for Control: Short supply and the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440, October 2, 1986).

Special Licenses Available: None.

Special South Africa Controls: No refined petroleum products covered by this ECCN may be exported to the Republic of South Africa, or reexported to South Africa by a U.S. National (see § 785.4(a)(13)).

4798B Precursor and intermediate chemicals used in the production of chemical warfare agents.

Controls for ECCN 4798B

Unit: Report in "$ value."

Validated License Required: All destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portygal, Spain, Switzerland, Turkey, and the United Kingdom.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special Foreign Policy Controls: This validated license requirement i maintained to prevent diversion to Iran, Iraq, Syria, and Libya for use in chemical warfare.

List of Chemicals Controlled by ECCN 4798B

(See Supplement No. 1 to § 779.2, Interpretation 23: Precursor Chemicals for synonyms for the following chemicals)

(1) (C.A.S. #756-79-6) Dimethy methylphosphonate;

(2) (C.A.S. #868-85-9) Dimethy phosphite (dimethyl hydrogen phosphite);

(3) (C.A.S. #676-97-1) Methylphosphonyl dichloride;

(4) (C.A.S. #676-99-3) Methylphosphonyl difluoride;

(5) (C.A.S. #10025-87-3) Phosphoru oxychloride;

(6) (C.A.S. #7719-12-2) Phosphoru trichloride;

(7) (C.A.S. #111-48-8) Thiodiglycol;

(8) (C.A.S. #7719-09-7) Thionyl chloride; and

(9) (C.A.S. #121-45-9) Trimethy phosphite.

5798F Chemicals, as described in thi entry.

Controls for ECCN 5798F

Unit: Report in "$ value."

Validated License Required: Countr Groups S and Z, Iran, Iraq, Syria, an as required by special South Afric policy below.

GLV $ Value Limit: General Licens GLV not applicable; however, anothe general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: validated license is required for expor or reexport to the Republic of Sout Africa if intended for delivery to or fo use by or for military or police entitie in South Africa, or for use in servicin equipment owned, controlled, or use by or for these entities. See § 785.4(a

Special Foreign Policy Controls: This validated license requirement is maintained for Iran, Iraq, Syria, and Libya to prevent chemical weapons proliferation.

List of Chemicals Controlled by ECCN 5799F

(See Supplement No. 1 to § 779.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals)

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;

(2) (C.A.S. #7784-34-1) Arsenic trichloride;

(3) (C.A.S. #76-93-7) Benzilic acid;

(4) (C.A.S. #107-07-3) 2-Chloroethanol;

(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate;

(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite;

(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoroamidate;

(8) (C.A.S. #762-04-9) Diethyl phosphite;

(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine;

(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol;

(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol;

(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride;

(13) (C.A.S. #108-18-9) Diisopropylamine;

(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate;

(15) (C.A.S. #124-40-3) Dimethylamine;

(16) (C.A.S. #506-59-2) Dimethylamine hydrochloride;

(17) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);

(18) (C.A.S. #1498-40-4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride]; [1]

(19) (C.A.S. #430-78-4) Ethylphosphonus difluoride [Ethylphosphinyl difluoride]; [1]

(20) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride;

(21) (C.A.S. #753-98-0) Ethylphosphonyl difluoride;

(22) (C.A.S. #7664-39-3) Hydrogen fluoride;

(23) (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine;

(24) (C.A.S. #76-89-1) Methyl benzilate;

(25) (C.A.S. #676-83-5) Methylphosphonous dichloride [Methylphosphinyl dichloride]; [1]

(26) (C.A.S. #753-59-3) Methylphosphonous diflouride [Methylphosphinyl difluoride]; [1]

(27) (C.A.S. #10026-13-8) Phosphorus pentachloride;

(28) (C.A.S. #1314-80-3) Phosphorus pentasulfide;

(29) (C.A.S. #75-97-8) Pinacolone;

(30) (C.A.S. #464-07-3) Pinacolyl alcohol;

(31) (C.A.S. #151-50-8) Potassium cyanide;

(32) (C.A.S. #7789-23-3) Potassium fluoride;

(33) (C.A.S. #7789-29-9) Potassium hydrogen fluoride;

(34) (C.A.S. #1619-34-7) 3-Quinuclidinol;

(35) (C.A.S. #3731-38-2) 3-Quinuclidinone;

(36) (C.A.S. #1333-83-1) Sodium bifluoride;

(37) (C.A.S. #143-33-9) Sodium cyanide;

(38) (C.A.S. #7681-49-4) Sodium fluoride;

(39) (C.A.S. #1313-82-2) Sodium sulfide;

(40) (C.A.S. #102-71-6) Triethanolamine; and

(41) (C.A.S. #122-52-1) Triethyl phosphite.

4799B Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, cannisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

(Specify by name.) (See § 776.14.)

All other forms of tear gas are controlled by the U.S. Department of State, Office of Munitions Control.

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[1] Chemicals name previously used in Supplement No. 1 to § 799.1.

Controls for ECCN 4799B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is not required for export of these commodities to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Crime control (foreign policy).

Special Licenses Available: None.

Special Foreign Policy Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) to any destination except Australia, Japan, New Zealand, and members of NATO.

ADVISORY NOTE: Applications for validated export licenses generally will be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

6799G Other chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s.

Controls for ECCN 6799G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

GROUP 8—RUBBER AND RUBBER PRODUCTS

NOTE: You need a validated export license to export or reexport technical data related to rubber and rubber products to destinations in Country Groups Q, S, W, Y, or Z. You may use General License *GTDR* for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided* That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the Regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

6899G Other rubber and rubber products, n.e.s., except those controlled by ECCNs 1746A and 1754A.

Controls for ECCN 6899G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical supplies.

GLV $ Value Limit: General license *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

GROUP 9—MISCELLANEOUS

NOTE: You need a validated export license to export or reexport technical data related to the miscellaneous products in this Commodity Group 9 to destinations in Country Groups Q, S, W, Y, or Z. You may use General License GTDR for exports or reexports of technical data to destinations in Country Groups T & V (except for those exports to the People's Republic of China restricted by § 779.4 of the regulations) *Provided* That:

(a) The technical data are not listed in paragraphs (c) or (d) of § 779.4 of the regulations, *and*

(b) There are no special foreign policy controls on the technical data related to the commodities described in an individual CCL entry.

See § 770.10 for commodities that require export authorization from other U.S. Government Departments and Agencies.

NOTE: Software and other technical data listed under CCL entries are controlled by and subject to the licensing requirements imposed under Part 779 of the Export Administration Regulations; see § 779.4. For computer-related terms, see ECCN 1565A.

2901A Military Equipment.

Controls for ECCN 2901A

Unit: Report in "number".

Validated Licenses Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security; foreign policy.

Special South Africa Controls: Bayonets and muzzle-loading firearms controlled by ECCN 2901A are subject to the Republic of South Africa embargo policy, and no technical data relating to these items may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Licenses Available: None.

List of Military Equipment Controlled by ECCN 2901

(a) Bayonets;

(b) Muzzle-loading (black powder) firearms;

NOTE: Antique small arms dating prior to 1890 and their reproductions are *not* controlled by this ECCN 2901 (See ECCN 6999G).

2913A Military helmets.

Controls for ECCN 2913A

Unit: Report in "number".

Validated Licenses Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,500 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National Security.

Special Licenses Available: See Part 773.

List of military helmets controlled by ECCN 2913A military helmets, except:

(a) Conventional steel helmets other than those described by (b) below.

(b) Helmets, made of any material, equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers. (See Note)

NOTE: Helmets described in (a) are controlled by ECCN 6999G. Helmets described in (b) are controlled by the U.S. Department of State, Office of Defense Trade Controls. See Supplement 2 to part 770, Category X, "Protective Personnel Equipment".

6994F Other pressurized aircraft breathing equipment, n.e.s.; and specially designed parts.

Controls for ECCN 6994F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below.

GLV $ Value Limit: $0.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in South Africa, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

4996B Western red cedar (Thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 4 to part 777.

Controls for ECCN 4996B

Unit: Report in "million board feet scribner."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 to all destinations.

Processing Code: SS.

Reason for Control: Short supply.

Special Licenses Available: None.

4997B Viruses or viroids for human, veterinary, plant, or laboratory use, except those listed in § 799.2, Interpretation 25. (See Interpretation 24 for classification of microorganisms on the basis of hazard or pathogenicity.)

NOTE: Genetically modified organisms that contain DNA sequences associated with pathogenicity arising from source organisms *not* found in Interpretation 25 require an individual validated license to all destinations except Canada; note source(s) of modifying DNA and sequences(s) (if any).

Controls for ECCN 4997B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: See Part 773.

4998B Bacteria, fungi, and protozoa, except those listed in § 799.2, Interpretation 26. (See Interpretation 24 for classification of etiologic agents on the basis of hazard or pathogenicity.)

NOTE: Genetically modified organisms that contain DNA sequences associated with pathogenicity arising from source organisms *not* found in Interpretation 26 require an individual validated license to all destinations except Canada; note source(s) of modifying DNA and sequences(s) (if any).

Controls for ECCN 4998B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: See Part 773.

5998B Shotguns, barrel length 18 inches or over; buckshot shotgun shells; and arms, discharge type (for example, stun-guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc., except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s., including optical sighting devices for firearms.

Controls for ECCN 5998B

Unit: Report in "$ value."

"*Validated License Required:* Country Groups QSTVWYZ, except for Australia, Japan, New Zealand, and members of NATO.

(a) Shotguns with a barrel length 24 inches or over require a validated license for shipment to:

(1) Country Groups QSWYZ, regardless of end-user;

(2) South Africa, Botswana, Lesotho and Swaziland, regardless of end-user; and

(3) Other destinations in Country Groups T and V, except for Australia, Japan, New Zealand, and members of NATO, *only* if for sale or resale to police or law enforcement agencies.

(b) Shotguns with a barrel length of at least 18 inches but less than 24 inches require a validated license for shipment to all destinations, except Australia, Japan, New Zealand, and members of NATO, regardless of end-user.

(c) Shotguns with a barrel length of less than 18 inches are controlled by the Office of Munitions Control, Department of State.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Crime control (foreign policy).

Special Licenses Available: None.

Special South Africa Controls: Commodities defined in ECCN 5998B (except optical sighting devices) are subject to the Republic of South Africa embargo policy, and no technical data relating to those commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

Special Foreign Policy Controls: No commodities in this entry may be shipped to the Republic of South Africa, Botswana, Lesotho, and Swaziland without a validated license. However, a validated license is *not* required for export of shotguns with barrel length of 24 inches or over and parts, n.e.s., to other destinations in Country Groups T and V, for consignment or resale to other than police or law enforcement agencies. An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License *GTDA*) to any destination except Australia, Japan, New Zealand, and members of NATO.

6998F Shotgun shells, except buckshot shotgun shells, and parts.

Controls for ECCN 6998F

Unit: Report in "$ value."

Validated License Required: Country Groups S and Z and the Republic of South Africa, Botswana, Lesotho, and Swaziland.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: Commodities defined in ECCN 6998F (except optical sighting devices) are subject to the Republic of South Africa embargo policy, and no technical data relating to those commodities may be exported under General License *GTDR* to any consignee in the Republic of South Africa.

4999B Horses for export by sea.

Controls for ECCN 4999B

Unit: Report in "$ Value."

Validated License Required: Country Groups QSTVWYZ and Canada.

GLV $ Value Limit: $0 for all destinations.

Processing Code: SS.

Reason for Control: Short supply (see § 776.3)

Special Licenses Available: None.

5999B Saps; specially designed implements of torture; straight jackets; plastic handcuffs; police helmets and shields; and parts and accessories, n.e.s.

Controls for ECCN 5999B

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ. A validated license is *not* required for export of thees commodities to Australia, Japan, New Zealand, and members of NATO.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM.

Reason for Control: Crime control (foreign policy).

Special Crime Controls: An individual validated export license is required for foreign policy purposes to export crime control and detection instruments and equipment and related technical data (except that authorized under General License (*GTDA*) to any destination except Australia, Japan, New Zealand, and members of NATO.

NOTE: See ECCN 1746A for controls on police helmets containing 50% or more aromatic polyamide fiber by value.

6999G Other commodities, n.e.s., and parts and accessories, n.e.s.; and military oxygen masks and protective clothing for handling corrosive fuels.

Controls for ECCN 6999G

Unit: Report in "$ value."

Validated License Required: Country Groups SZ and as required by Special South Africa policy below.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing code: CM.

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special South Africa Controls: A validated license is required for export or reexport to the Republic of South Africa if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 785.4(a).

7999I Prerecorded phonograph records reproducing, in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications including bound newspapers and periodicals; children's picture and painting books; newspaper and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazeteers, globe covers, and globes, (terrestrial or celestial) and advertising printed matter exclusively related thereto.

Controls for ECCN 7999I

Unit: Report in "$ value."

Validated License Required: None.

GLV $ Value Limit: General License *GLV* not applicable; however, another general license may apply.

Processing Code: CM.

Reason for Control: None.

Technical Data: Not applicable.

9999M Technical models for demonstration. The validated export license control applicable to each model is the same as the control applicable to the full size commodity represented by the model as exercised by Commerce (OEL and/or Maritime Administration), State (OMC), or Nuclear Regulatory Commission.

(Secs. 6, 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.;* E.O. 12214 (45 FR 29783, May 6, 1980; secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628, 50 U.S.C. 1702, 1704; E.O. 12444 of Oct. 14, 1983 (48 FR 48215, Oct. 18, 1983); secs. 5, 13 and 15, Pub. L. 96-72, 93 Stat. 503, as amended, 50 U.S.C. App. 2401 *et seq.*, E.O. 12214 (45 FR 29783, May 6, 1980); E.O. 12451 of Dec. 20, 1983 (48 FR 56563, Dec. 22, 1983); secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. 12470 of Mar. 30, 1984 (49 FR 13099, Apr. 3, 1984))

[47 FR 58124, Dec. 29, 1982. Redesignated at 53 FR 37751, Sept. 28, 1988]

EDITORIAL NOTE: For additional FEDERAL REGISTER citations to Supplement No. 1 of § 799.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 799.2 Commodity interpretations.

The commodity interpretations set forth in Supplement No. 1 to this section are for use in determining (a) the appropriate Export Control Commodity Numbers under which certain commodities are classified, or (b) the validated license requirements for these commodities. They are intended to clarify the question of control where it has been demonstrated that such clarification may prove helpful to the export community, and where such control is not readily apparent from the Commodity Control List and the Export Administration regulations.

[45 FR 85942, Dec. 3, 1980. Redesignated at 53 FR 37751, Sept. 28, 1988]

SUPPLEMENT NO. 1 TO § 799.2—INTERPRETATIONS

Interpretation 1: Electronic Computers and Related Equipment (ECCN 1565A)

1. *Nuclear non-proliferation controls.* The following equipment is subject to nuclear non-proliferation controls:

The following equipment is subject to nuclear non-proliferation controls:

(a) A validated license is required for nuclear non-proliferation reasons for all electronic computers intended for ultimate consignees located in any destinations outside of Canada or a country listed in Supplement No. 2 to Part 773 and engaged directly or indirectly in any of the following activities:

(1) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(2) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

(3) Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or

(4) Training in any of the above activities; and

(b) Advanced electronic computers *except:*

(1) Electronic computers, other than supercomputers, are not subject to nuclear non-proliferation controls for destinations listed in supplement Nos. 2 and 8 to part 773 of the Export Administration Regulations.

(2) Electronic computers having a "total processing data rate" of 2,000 million bits per second or less are not subject to nuclear non-proliferation controls for destinations listed in supplement No. 3 to part 773 of the Export Administration Regulations unless the activities cited in paragraph (a) of this interpretation are involved.

(3) Electronic computers having a "total processing data rate" of 275 million bits per second or less are not subject to nuclear non-proliferation controls for destinations not listed in supplement Nos. 2, 3, or 8 of part 773 of the Export Administration Regulations unless the activities cited in paragraph (a) of this interpretation are involved.

(4) Electronic computers having a total processing data rate of 20 million bits per second or less are not subject to nuclear non-proliferation controls for destinations not listed in Supplement Nos. 2 or 3 to Part 773 of the Export Administration Regulations unless the activities cited in (a) above are involved.

2. *Digital computers or related equipment designed or modified for signal processing.* ECCN 1565A releases from control "embedded" and "incorprated" "digital computers" or "related equipment" that meet the requirements specified in paragraphs (h)(2)(i) and (h)(2)(ii) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" on the Commodity Control List (15 CFR 799.1, Supplement No. 1). However, if the "digital computer" or "related equipment" is designed or modified for "signal processing," the decontrol provisions of paragraphs (h)(2)(i) and (h)(2)(ii) do not apply—i.e., if the "signal processing" function in a digital computer or related equipment is implemented in *hardware*, the computer or related equipment is not released from control under these paragraphs. However, if the "signal processing" function is implemented only through software, the computer or related equipment is released from control, provided the other requirements of paragraphs (h)(2)(i) and (h)(2)(ii) are met.

"Signal processing" software is controlled in Supplement No. 3 to 15 CFR Part 779. However, paragraph (a)(3)(ii) under the "List of Software Subject to Supplement No. 3 to Part 779" exempts from Supplement No. 3 the minimum "signal processing" software necessary to perform the function for which a decontrolled piece of equipment was designed, if the software is in machine executable form (object code) and supplied with the equipment. This software may be exported with the equipment under General License GTDR to all destinations, except those in Country Groups S and Z, without written assurance.

Therefore, instruments that perform "signal processing" are classified under ECCN 6599G on the Commodity Control List (15 CFR 799.1, Supplement No. 1) when they contain "embedded" or "incorporated" "digital computers" or "related equipment" that meet the requirements of paragraphs (h)(2)(i) and (h)(2)(ii) of ECCN 1565A and the "signal processing" function is implemented in software, *not* hardware. The minimum software necessary to make this equipment perform the function for which it was designed may be exported with the equipment under General License GTDR to all destinations, except those in Country Groups S and Z.

Interpretation 2: Ball and Roller Bearings and Specially Designed Parts

(a) A ball or roller bearing physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identify as a bearing and the machine or segment of machinery *containing the bearing* is the item subject to export license requirements.

(b) A ball or roller bearing *not* incorporated in a segment of a machine prior to shipment but shipped as a component of a complete unassembled (knocked-down) machine is considered a component of the machine, and the *complete machine* is the item subject to export license requirements.

(c) Ball or roller bearings shipped as spares or replacements are classified under ECCN 1371 and 6699 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of ball or roller bearings *and* ball or roller bearings shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

Interpretation 3: Gear Making and Finishing Machinery

Certain Types of gear-making and gear-finishing machines, Export Control Commodity No. 1088, require a validated license for shipments to all destinations except Canada if they are capable of producing gears finer than 48 diametral pitch. In order to clairfy the meaning of the term "diametral pitch finer than 48," examples are given of how diametral pitch is computed. In addition, there is also given below an explanation of how to distinguish between "gear-tooth grinding machines, generating types" and "nongenerating types of grinding machines."

(a) *Diametral pitch* of a gear is the ratio of the number of teeth to the number of inches in the pitch diameter. It indicates the number of teeth in the gear for each inch of pitch diameter. ("Pitch diameter" is the diameter of the pitch circle which is the circle through the pitch point having its center at the axis of the gear.) *Module* (British or metric) is the ratio of the pitch diameter in millimeters to the number of teeth. The larger the proportion of teeth to pitch diameter, the finer the diametral pitch. Example of diametral pitch: If a gear has a 1-inch pitch diameter and has 48 teeth, the ratio would be 48:1, or a 48 diametral pitch gear. Additional teeth in the same pitch diameter gear, *i.e.*, 49, would result in a finer diametral pitch; fewer teeth, *i.e.*, 47, would result in a gear of coarser diametral pitch. Examination of a gear making or finishing machine may not disclose whether it is capable of producing a gear of finer than 48 diametral pitch. If the exporter has no information on the ability of the machine to be exported for making gears of finer than 48 diametral pitch, he should obtain the information from the manufacturer or distributor.

(b) *Generating type geartooth grinding machines* are those in which the grinding wheel and the gear are both power-driven for continuous circular motion while grinding, rather than an intermittent or indexing operation as with the non-generating type.

Interpretation 4: Classification of "Parts" of Machinery, Equipment, or Other Items

(a) *Where an assembled machine or unit of equipment is being exported.* Where one or more assembled machines or units of equipment are being exported, the individual component parts which are physically incorporated into the machine or equipment do not require a separate validated export license. The validated license or the general license under which the complete machine or unit of equipment is exported will also cover its component parts, *provided* that the parts are normal and usual components of the machine or equipment being exported; or that the physical incorporation is not used as a device to evade the requirement for a validated export license.

(b) *Where parts are exported as spares, replacements, for resale, or for stock.* Where parts are exported as spares, replacements, for resale or for stock, a validated export license is required only if the appropriate entry for the part specifies that a validated license is required for the intended destination.

Interpretation 5: Wire or Cable Cut to Length

(a) Wire or cable may be included as a component of a system or piece of equipment, whether or not the wire or cable is cut to length and whether or not it is fitted with connectors at one or both ends so long as it is in normal quantity necessary to make the original installation of the equipment and is necessary to its operation.

(b) Wire or cable shipped as replacement or spares, or for further manufacture overseas, shall be reported under the applicable wire or cable classification only. This includes wire or cable, whether or not cut to length or fitted with connectors at one or both ends.

Interpretation 6: Telecommunications Equipment and Systems

Communcations equipment and systems capabilities and features have proliferated to the point where it is sometimes impractical to write control parameters to differentiate between specific applications having strategic significance and those eligible for export at lower control levels. COCOM makes these differentiations in documentation not available to the general public. The following interpretations have been made:

(a) Equipment for paging systems (broadcast radio or selectively signalled receiving systems) is not included in the definition of "data (message) switching" of ECCN 1567A.

(b) [Reserved]

Interpretation 7: Numerical Control Systems

(a) *Technical notes.* (1) "Numerical control" is defined as the "automatic control of a process performed by a device that makes use of numeric data usually introduced as the operation is in progress" (Ref. ISO 2382).

(2) "Contouring control" is defined as "two or more numerically controlled motions operating in accordance with instructions that specify the next required position and the required feed rates to that position. These feed rates are varied in relation to each other so that a desired contour is generated" (Ref. ISO/DIS 2806).

(3) For definitions of computer-related terms, see ECCN 1565, Advisory Note 16.

(4) A "direct numerical control system" (DNC) is defined as "a system connecting a set of numerically controlled machines to a common memory for part program or machine program with provision for on-demand distribution of data to the machines" (Ref. ISO/DIS 2806.2).

(5) Axis nomenclature shall be in accordance with international standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

(6) The value of the positioning accuracy does not include the width of backlash. The value is determined by the usual statistical methods (random tests), i.e., by approaching

from only one direction a minimum of 5 measurement points up to a maximum of 25 measurement points as random tests along one axis. National standards may be used for this measuring method: e.g., the German standard VDI, "Statistical testing of the operational and positioning accuracy of machine-tools VDI-DGQ3441, March, 1977".

(b) *Classification of CNC units and specially designed subassemblies.* (1) Computer Numerical Control (CNC) units, specially designed for controlling machine tools (i.e., do not utilize "associated" or "incorporated" computers as defined in ECCN 1565A) are controlled by their functional characteristics as described in ECCN 1091A without regard to ECCN 1565A computer parameters.

(2) Specially designed sub-assemblies for CNC units, including specially designed printed circuit boards, are also controlled under ECCN 1091A.

(c) *Export documentation.* (1) When preparing an export license application for a numerical control system, the machine tool and the control unit are classified separately. If either the machine tool or the control unit requires a validated license, then the entire system requires a license. If either a machine tool or a control unit is exported separately from the system, the exported component is classified on the export license application without regard to the other parts of a possible system.

(2) When preparing the Shipper's Export Declaration (SED), however, a system being shipped complete (i.e., machine and control unit), should be reported under the Schedule B number for the machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

Interpretations 8 and 9: [Reserved]

Interpretation 10: Parts, Accessories, and Equipment Exported as Scrap

Parts, accessories, or equipment which are being shipped as scrap should be described on the Shipper's Export Declaration in sufficient detail to be identified under the proper Commodity Control List Number. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment. Exporters should consult the Exporter Assistance Staff, Office of Export Licensing, Room 1623, U.S. Department of Commerce, Washington, DC 20230, when in doubt regarding the proper Commodity Control List Number of commodities, as parts, accessories, equipment or as scrap.

Interpretation 11: [Reserved]

Interpretation 12: Scrap Arms, Ammunition, and Implements of War

Arms, ammunition, and implements of war, as defined in the U.S. Munitions List (see Supplement No. 2 to Part 770), are under the jurisdiction of the U.S. Department of State, with the following exceptions:

(a) Cartridge and shell cases which have been rendered useless beyond the possibility or restoration to their original identity by means of excessive heating, flame treatment, mangling, crushing, cutting, or by any other method are "scrap" and under the jurisdiction of the U.S. Department of Commerce.

(b) Cartridge and shell cases which have been sold by the armed services as "scrap" are under the jurisdiction of the U.S. Department of Commerce, whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(c) Other commodities on the Munitions List are "scrap" and under the jurisdiction of the U.S. Department of Commerce if they have been rendered useless beyond the possibility of restoration to their original identify *only* by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Office of Munitions Control, U.S. Department of State, Washington, DC 20520, or the Exporter Assistance Staff, Office of Export Licensing, Room 1623, U.S. Department of Commerce, Washington, DC 20230, before reporting a shipment as metal scrap.

Interpretations 13-18: [Reserved]

Interpretation 19: Military Automotive Vehicles

(a) *Military automotive vehicles.* (1) For purposes of U.S. export controls, military automotive vehicles "possessing or built to current military specifications differing materially from normal commercial specifications" may include, but are not limited to, the following characteristics:

(i) Special fittings for mounting ordnance or military equipment,

(ii) Bullet-proof glass,

(iii) Armor plate,

(iv) Fungus preventive treatment,

(v) Twenty-four volt electrical systems,

(vi) Shielded electrical system (electronic emission suppression), or

(vii) Puncture-proof or run-flat tires.

(2) These automotive vehicles fall into two categories:

(i) *Military automotive vehicles on the Munitions List, new and used.* Automative vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, "designed for specific fighting function." These automotive vehicles are licensed by the U.S. Department of State. See list with descriptions, Supplement No. 2 to Part 770, Category VII.

(ii) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for noncombat military purposes (transporting cargo, personnel and/or equipment, and/or for towing other vehicles and equipment over land and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed by the U.S. Department of Commerce.

(b) *Parts for military automotive vehicles.* Functional parts are defined as those parts making up the power train of the vehicles, including the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers.

Parts specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State.

(c) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described above. Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general license or submitting an application to the Office of Export Licensing for an export license.

Interpretation 20: Aircraft, Parts, Accessories and Components

(a) *Aircraft, and parts, accessories and components therefor.*[1] Aircraft, parts, accessories, and components defined in Categories VIII and IX of the Munitions List (see supplement No. 2 to Part 770) are under the export licensing authority of the U.S. Department of State. All other aircraft, and parts, accessories and components therefor, are under the export licensing authority of the U.S. Department of Commerce.

The following aircraft, parts, accessories and components are under the licensing authority of the U.S. Department of Commerce:

(1) Any aircraft (except an aircraft that has been demilitarized, but including aircraft specified in paragraph (2) below) that conforms to a Federal Aviation Agency type certificate in the normal, utility, acrobatic, transport, or restricted category, provided such aircraft has not been equipped with or modified to include military equipment, such as gun mounts, turrets, rocket launchers, or similar equipment designed for military combat or military training purposes.

(2) Military aircraft, demilitarized (aircraft not specifically equipped, reequipped, or modified for military operations), *the following only:*

(i) Cargo, bearing designations "C-45 through C-118 inclusive, " and "C-121";

(ii) Trainers, bearing a "T" designation and using piston engines;

(iii) Utility, bearing a "U" designation and using piston engines;

(iv) Liaison, bearing an "L" designation; and

(v) Observation, bearing an "O" designation and using piston engines.

(3) All reciprocating engines.

(4) Other aircraft engines not specifically designed or modified for military aircraft.

(5) Parts, accessories, and components (including propellers), designed exclusively for aircraft and engines described in (1), (2), (3), and (4) above.

(6) General purpose parts, accessories, and components usable interchangeably on either military or civil aircraft.

(b) *Normal civil use.* Aircraft listed on the Commodity Control List under No. 1460 are those that are in normal civil use and contain one or more of the following:

(1) Any item on the Munitions List (see Supplement No. 2 to Part 770),

(2) Inertial navigation or other inertial equipment,

(3) Integrated flight instrument systems that have been in normal civil use for less than two years,

(4) Airborne communications equipment having any of the following characteristics:

(i) Designed to operate at frequencies greater than 156 MHz,

(ii) Incorporating facilities for (a) the rapid selection of more than 200 channels per equipment, *except equipment operating in frequency range 108-136 MHz with 720 or fewer channels at not less than 25 kHz spacing and which has been in normal civil use for at least one year,* or (b) using frequency synthesis techniques with a speed of switching from one selected output frequency to another selected output frequency less than 10 milliseconds,

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[1] This interpretation does not refer to electronic communication and navigational commodities usable on aircraft.

(iii) Pressurized throughout,

(iv) Rated for continuous operation over a range of ambient temperatures extending from below minus 55° C. to above plus 55° C, and/or

(v) Designed for modulating methods employing any form of digital modulation using time and frequency redundancy such as "Quantized Frequency Modulation" (QFM).

(5) Airborne navigation and direction finding equipment having *any* of the following characteristics:

(i) Pressurized throughout,

(ii) Rated for continuous operation over a range of ambient temperatures extending from below minus 55° C. to above plus 55° C,

(iii) Frequency modulated radio altimeters which have been in normal civil use for less than one year,

(iv) Pulse modulated radio altimeters.

(v) Is not in conformity with ICAO standards or provides a function exceeding those resulting from such standards,

(vi) Is designed to make use of hyperbolic grids at frequencies greater than 3 MHz, and/or

(vii) Direction finding equipment operating at frequencies greater than 5 MHz, other than equipment designed for search and rescue.

(6) Airborne radar having *any* of the following:

(i) In normal commercial service for less than one year, and/or

(ii) Specially designed for use other than as commercial weather radar,

(iii) Incorporating any digital signal processing technique used for automatic target tracking, or having a facility for electronic tracking.

Interpretation 21

The Department of Commerce, Office of Export Licensing (OEL), has licensing jurisdiction over exports to Country Groups T and V,[6] except the People's Republic of China, of standard civil aircraft inertial navigation equipment that is certified by the Federal Aviation Administration as follows:

(a) Complete units mounted in civil aircraft;

(b) Separate units and spare parts to be incorporated into civil aircraft;

(c) Separate units and spare parts to be used for maintenance and repair of inertial navigation equipment: and

(d) Technical data relating to the installation, assembly, maintenance, repair or operation of inertial navigation systems described above, or their parts, components or subsystems (including accelerometers and gyroscopes).

The Department of State, Office of Munitions Control (OMC), retains jurisdiction over all of the following:

(a) Exports of inertial navigation equipment and all related technical data to controlled countries described in section 620(f) of the Foreign Assistance Act of 1961, as amended, excluding Yugoslavia (Country Groups Q, W, Y, Z and the People's Republic of China);

(b) Exports to any destination of all inertial navigation equipment not certified by the FAA;

(c) Exports to any destination of inertial navigation equipment not used as an intergral part of civilian aircraft;

(d) Exports to any destination of technical data relating to the design, development, production or manufacture, of inertial navigation equipment, its related parts, components or subsystems; and

(e) Exports of technical data relating to the repair of parts, components or subsystems of inertial navigational systems, (including accelerometers and gyroscopes) not certified by the FAA or not used as an integral part of civil aircraft.

For replacement equipment only, the supplier may apply to the Department of Commerce for a limited exception to use General License G-TEMP. The supplier could then furnish temporary replacement INS units to specified customers when necessary to allow continued safe operation of the aircraft, retrieving them when the defective units are repaired.

Parties ferrying aircraft overseas using temporary installations of inertial navigation systems may apply to the Department of Commerce for a limited exception to use General License G-TEMP.

Interpretation 22: [Reserved]

Interpretation 23: Precursor Chemicals

Following is a listing of chemicals controlled by ECCN 4798B and ECCN 5798F that includes their Chemical Abstract Service Registry (C.A.S.) number and synonyms, *i.e.*, alternative names.

(a) The chemicals controlled by ECCN 4798B listed below require a validated license to all countries except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey and the United Kingdom.

(1) (C.A.S. 756-79-6) Dimethyl methylphosphonate (DMMP)
Dimethoxymethyl phosphine oxide

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[6] See Supplement No. 1 to Part 770 for a listing of the country groups.

Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester
(2) (C.A.S. 868-85-9) Dimethyl phosphite
Dimethyoxyphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphonate
(3) (C.A.S. 676-97-1) Methylphosphonyl dichloride
Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride
Methylphosphonodichloridic acid
Methylphosphonyl chloride
(4) (C.A.S. 676-99-3) Methylphosphonyl difluoride
Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride
(5) (C.A.S. 10025-87-3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide
(6) (C.A.S. 7719-12-2) Phosphorus trichloride
Phosphorus chloride
Trichlorophosphine
(7) (C.A.S. 111-48-8 Thiodiglycol
Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2′-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2′-Thiobisethanol
2,2′-Thiodiethanol
Thiodiethylene glycol
2,2′-Thiodiglycol
(8) (C.A.S. 7719-09-7) Thionyl chloride
Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(9) (C.A.S. 121-45-9) Trimethyl phosphite
Phosphorus acid trimethyl ester
Trimethoxyphosphine

(b) The chemicals controlled by ECCN 5798F listed below require a validated license to Country Groups S and Z, Iran, Iraq, Syria, and to South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities.

(1) (C.A.S. 1341-49-7) Ammonium hydrogen fluoride
Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride
Ammonium hydrofluoride
Ammonium hydrogen bifuoride
Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride
(2) (C.A.S. 7784-34-1) Arsenic trichloride
Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine
(3) (C.A.S. 76-93-7) Benzilic acid
.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid Diphenylgloycolic acid
.alpha.,.alpha.-Diphenylglycolic acid Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid 2-Hydroxy-2, 2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid Hydroxydiphenylacetic acid
(4) (C.A.S. 107-07-3) 2-Chloroethanol
2-Chloro-1-ethanol
Chloroethanol
2-Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorhydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2-Hydroxyethyl chloride
(5) (C.A.S. 78-38-6) Diethyl ethylphosphonate
Ethylphosphonic acid diethyl ester
(6) (C.A.S. 15715-41-0) Diethyl methylphosphonite
Diethoxymethylphosphine
Diethyl methanephosphonite
O,O-Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester
(7) (C.A.S. 2404-03-7) Diethyl-N,N-dimethylphosphoramidate
N,N-Dimethyl-O,O′-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester
(8) (C.A.S. 762-04-9) Diethyl phosphite
Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyl phosphonate
Hydrogen diethyl phosphite

(9) (C.A.S. 100-37-8) N,N-Diethylethanolamine
N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl)amine
N,N-Diethyl-N-(.beta.-hydroxyethyl)amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino) ethanol
2-(Diethylamino) ethyl alcohol
N,N-Diethylmonoethanolamine
(2-Hydroxyethyl)diethylamine
N-(2-Hydroxyethyl)diethylamine
2-Hydroxytriethylamine
(10) (C.A.S. 5842-07-9) N,N-Diisopropyl-.beta.-aminoethanethiol
2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol
(11) (C.A.S. 96-80-0) N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
(12) (C.A.S. 96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride
2-Chloro-N,N-diisopropethanamine
1-Chloro-2-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
N-(2-Chloroethyl)diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-chloroethane
2-(Diisopropylamino)ethyl chloridege
Diisopropylaminoethyl chloride
.beta.-Diisopropylaminoethyl chloride
(13) (C.A.S. 108-18-9) Diisopropylamine
N,N-Diisopropylamine
N-(1-Methylethyl)-2-propanamine
(14) (C.A.S. 6163-75-3) Dimethyl ethylphosphonate
Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester
(15) (C.A.S. 124-40-3) Dimethylamine
N-Methyl methanamine
(16) (C.A.S. 506-59-2) Dimethylamine hydrochloride
Dimethylammonium chloride
N-Methyl methanamine hydrochloride
(17) (C.A.S. 57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL)
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
(18) (C.A.S. 1498-40-4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine
(19) (C.A.S. 430-78-4) Ethylphosphonous difluoride
Ethyldifluorophosphine
(20) (C.A.S. 1066-50-8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride
(21) (C.A.S. 753-98-0) Ethylphosphonyl difluoride
Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride
(22) (C.A.S. 7664-39-3) Hydrogen fluoride
Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas
(23) (C.A.S. 3554-74-3) 3-Hydroxy-1-methylpiperidine
3-Hydroxy-N-methylpiperidine
1-Methyl-3-hydroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidinol
(24) (C.A.S. 76-89-1) Methyl benzilate
Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate
(25) (C.A.S. 676-83-5) Methylphosphonous dichloride
Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride
(26) (C.A.S. 753-59-3) Methylphosphonous difluoride
Difluoromethylphosphine
Methyldifluorophosphine
(27) (C.A.S. 10026-13-8) Phosphorus pentachloride
Pentachlorophosphorane
Pentachlorophosphorus
Phosphoric chloride
Phosphorus(V) chloride
Phosphorus perchloride
(28) (C.A.S. 1314-80-3) Phosphorus pentasulfide
Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide
(29) (C.A.S. 75-97-8) Pinacolone
tert-Butyl methyl ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl ketone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone
(30) (C.A.S. 464-07-3) Pinacolyl alcohol
tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol
(31) (C.A.S. 151-50-8) Potassium cyanide

(32) (C.A.S. 7789-23-3) Potassium fluoride
  Potassium monofluoride
(33) (C.A.S. 7789-29-9) Potassium hydrogen fluoride
  Hydrogen potassium difluoride
  Hydrogen potassium fluoride
  Potassium acid fluoride
  Potassium bifluoride
  Potassium hydrogen difluoride
  Potassium monohydrogen difluoride
(34) (C.A.S. 1619-34-7) 3-Quinuclidinol
  1-Azabicyclo(2.2.2)octan-3-ol
  3-Hydroxyquinuclidine
(35) (C.A.S. 3731-38-2) 3-Quinuclidone
  1-Azabicyclo(2.2.2)octan-3-one
  3-Oxyquinuclidine
  Quinuclidone
(36) (C.A.S. 1333-83-1) Sodium bifluoride
  Sodium hydrogen difluoride
  Sodium hydrogen flûoride
  Thiophosphoric anhydride
(37) (C.A.S. 143-33-9) Sodium cyanide
(38) (C.A.S. 7681-49-4) Sodium fluoride
  Sodium monofluoride
(39) (C.A.S. 1313-82-2) Sodium sulfide
  Disodium monosulfide
  Disodium sulfide
  Sodium monosulfide
  Sodium sulphide
(40) (C.A.S. 102-71-6) Triethanolamine
  Alkanolamine 244
  Nitrilotriethanol
  2,2',2''-Nitrilotriethanol
  2,2',2''-Nitrilotris(ethanol)
  TEA
  TEA(amino alcohol)
  Tri(2-hydroxyethyl)amine
  Triethanolamin
  Tris(.beta.-hydroxyethyl)amine
  Tris(2-hydroxyethyl)amine
  Trolamine
(41) (C.A.S. 122-52-1) Triethyl phosphite
  Phosphorous acid triethyl ester
  Triethoxyphosphine
  Tris(ethoxy)phosphine

Interpretation 24: Microorganism

I. Basis for Agent Classifications

Class 1. Agents of no or minimal hazard under ordinary conditions of handling.

Class 2. Agents of ordinary potential hazard. This class includes agents that may produce disease of varying degrees of severity from accidental inoculation or injection or other means of cutaneous penetration, but are contained by ordinary laboratory techniques.

Class 3. Agents involving special hazard or agents derived from outside the United States that require a federal permit for importation unless they are specified for higher classification. This class includes pathogens that require special conditions for containment.

Class 4. Agents that require the most stringent conditions for their containment because they are extremely hazardous to laboratory personnel or may cause serious epidemic disease. This class includes Class 3 agents from outside the United States when they are employed in entomological experiments or when other entomological experiments are conducted in the same laboratory area.

Class 5. Foreign animal pathogens that are excluded from the United States by law or whose entry is restricted by USDA administrative policy.

NOTE: Federally licensed vaccines containing live bacteria or viruses are not subject to these classifications. These classifications are applicable, however, to cultures of the strains used for vaccine production.

II. Classification of Agents

[This classification does not include strictly animal pathogens. A PHS permit is required to import any agent or to transfer within the United States any agent imported under permit.]

A. Classification of Bacterial Agents

Class 1. All bacterial agents not included in higher classes according to "Basis for Agent Classifications."

Class 2. Actinobacillus—all species except A. mallei, which is Class 3.

Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella-all species
Borrelia recurrentis, B. vincenti
Clostridium botulinum:
  C1. chauvoei, C1. haemolyticum,
  C1 histolyticum, C1. novyi,
  C1. septicum, C1. tetani
Corynebacterium diphtheriae,
  C. equi, C. haemolyticum,
  C. pseudotuberculosis,
  C. pyogenes, C. renale
Diplococcus (Streptococcus) pneumoniae
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic serotypes
Haemophilus ducreyi, H. influenzae
Herellea vaginicola
Klebsiella—all species and all serotypes
Leptospira interrogans—all serotypes
Listeria—all species
Mima polymorpha
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycoplasma—all species except Mycoplasma mycoides, which is in Class 5
Neisseria gonorrhoeae, N. meningitidis
Pasteurella—all species except those listed in Class 3
Salmonella—all species and all serotypes
Shigella—all species and all serotypes
Sphaerophorusnecrophorus
Staphylococcus aureus

Streptobacillus moniliformis
Streptococcus pyogenes
Treponema carateum, T. pallidum, and T. pertenue
Vibrio fetus, V. comma. including biotype El Tor, and V. parahemolyticus

Class 3. Actinobacillus mallei [1]

Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium avium, M. bovis M. tuberculosis
Pasteurella multocida type B ("buffalo" and other foreign virulent strains [1]
Pseudomonas pseudomallei [1]
Yersinia pestis

B. Classification of Fungal Agents

Class 1. All fungal agents not included in higher classes according to "Basis for Agent Classifications."

Class 2. Actinomycetes (including Nocardia species and Actinomyces species and Arachnia propionica).

Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides brasiliensis

Class 3. Coccidioides immitis.

Histoplasma capsulatum

C. Classification of Parasitic Agents

Class 1. All parasitic agents not included in higher classes according to "Basis for Agent Classifications."

Class 2. Endamoeba histolytica.

Leishmania sp.
Naegleria gruberi
Toxoplasma gondii
Toxocara canis
Trichinella spiralis
Trypanosoma cruzi

Class 3. Schistosoma mansoni

D. Classification of Viral, Rickettsial, and Chlamydial Agents

Class 1. All viral, rickettsial, and chlamydial agents not included in higher classes according to "Basis for Agent Classifications," including the following:

Influenza virus A PR8/34
Newcastle virus—strains licensed for vaccine use in the U.S.
Parainfluenza virus 3, SF4 Strain

[These viruses are specifically listed because they are suitable for science experiments at a junior level.]

Class 2 . Adenoviruses—human, all types.

Cache Valley virus
Coxsackie A and B viruses
Cytomegaloviruses
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Flanders virus
Hart Park virus
Hepatitis candidate viruses
Herpes viruses—except Herpesvirus simiae (Monkey B virus), which is in Class 4
Infectious bronchitis-like virus
Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza viruses—all types, except Parainfluenza virus 3. SF4 strain, which is in Class 1
Polioviruses—all types, wild and attenuated
Poxviruses—all types except Alastrim and Smallpox, which, depending on experiments, are in Class 3 or Class 4
Rabies virus—all strains except Rabies street virus, which is in Class 3 when inoculated into wild animals or domestic carnivores
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except Herpesvirus simiae (Monkey B virus) and Marburg virus, which are in Class 4
Sindbis virus
Tensaw virus
Turlock virus
Vaccinia virus
Varicella virus
Vole rickettsia
Yellow fever virus, 17D vaccine strain

Class 3. Alastrim, when used *in vitro.*

Arboviruses—all strains except those in Classes 2 and 4

(Arboviruses indigenous to the United States are in Class 3, except those listed in Class 2. West Nile and Semliki Forest viruses may be classified up or down, depending on the conditions of use and geographical location of the laboratory.)

Lymphocytic chorimeningitis virus (LCM)
Monkey pox virus
Psittacosis-Ornithosis-Trachoma group of agents
Rabies street virus, when used in inoculations of wild animals or domestic carnivores (See Class 2.)
Rickettsia—all species except Vole rickettsia when used for transmission or animal inoculation experiments
Smallpox virus, when used *in vitro*
Vesicular stomatitis virus [1]

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[1] USDA permit also required for import or interstate transport.

[1] USDA permit also required for import or interstate transport.

- Yellow fever virus—wild, when used *in vitro*

Class 4. Alastrim virus, when used for transmission or animal inoculation experiments

- Dengue virus, when used for transmission or animal inoculation experiments
- Hemorrhagic fever agents, including Crimean hemorrhagic fever (Congo), Junin, and Machupo viruses, and others as yet undefined
- Herpesvirus simiae (Monkey B virus)
- Lassa virus
- Marburg virus
- Mucambo virus
- Smallpox virus, when used for transmission or animal inoculation experiments
- Tick-borne encephalitis virus complex, including Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever, and Central Eueopean encephalitis viruses
- Yellow fever virus—wild, when used for transmission or animal inoculation experiments

Interpretation 25: Viruses and Viroids

The commodities identified in the interpretation may be exported under General License G-DEST to Country Groups QTVWY.

1. All Class I agents, as defined in Interpretation 24.

2. Class II agents, as follows:

Animal

- Adenoviruses
  - Amphibian
  - Avian (U.S. isolates only)
  - Bovine (U.S. isolates only)
  - Canine
  - Human (except Type 38)
  - Murine
  - Simian
- Caliciviruses
- Coronaviruses (except avian infectious bronchitis and rabbit coronavirus)
- Herpes and Herpes-like viruses
  - Canine
  - Equine
  - Feline
  - Fish
  - Guinea pig
  - Human (except B virus and simian herpes 3)
  - Swine
- Orthomyxoviruses
- Papovaviruses
- Paramyxoviruses (except Nariva and Newcastle disease)
- Parvoviruses (except goose hepatitis and LuIII)
- Picornaviruses
  - Human enteroviruses
  - Human rhinoviruses
  - Animal (except porcine entero 5)
- Poxviruses (except Cotia, Embu, Monkeypox, and Myxoma)
- Reoviruses
- Retroviruses (except spleen necrosis and Visna)
- Rotaviruses (except Bovine)

Bacterial

All phage strains *not* in hosts

Plant

All strains

Interpretation 26: Bacteria, Protozoa, and Fungi

The commodities identified in this interpretation may be exported under General License G-DEST to Country Groups QTVWY.

1. All Class I agents, as defined in Interpretation 24.

2. Class II agents listed in this Interpretation 26, including bacteria, protozoa, and fungi.

BACTERIA

Acetivibrio
Acetoanaerobium
Acetobacter
Acetobacterium
Acetogenium
Acetomicrobium
Acholeplasma
Achromobacter
Acidaminococcus
Acidiphilium
Acidothermus
Acinetobacter
Acranobacterium
Actinobacillus
Actinomadura
Actinomonospora
Actinomyces
Actinoplanes
Actinopolyspora
Actinopycnidium
Actinosporangium
Actinosynnema
Aerobacter
Aerococcus
Aeromonas
Agrobacterium
Agromyces
Alcaligenes
Alteromonas
Alysiella
Amorphosporangium
Ampullariella
Amycolata
Amycolatopsis
Anabaena
Anacystis
Anaerobiospirillum
Anaeroplasma
Anaerovibrio
Ancalomicrobium
Ancylobacter
Angiococcus
Aquaspirillum
Arachnia
Archangium
Arthrobacter
Asticcacaulis
Aureobacterium
Azomonas
Azospirillum
Azotobacter
Azotomonas

Bacterium
Bacteroides
Bartonella
Bdellovibrio
Beggiatoa
Beijerinckia
Beneckea
Betabacterium
Bifidobacterium
Blastobacter
Blastococcus
Bordetella
Bradyrhizobium
Branhamella
Brevibacterium
Brochothrix
Budvicia
Buttiauxella
Butyribacterium
Butyrivibrio

Calothrix
Capnoctophaga
Cardiobacterium
Caryophanon
Caseobacter
Caseococcus
Catenuloplanes
Caulobacter
Cedecea
Cellulomonas
Cellvibrio
Centipeda
Chaemisiphon
Chainia
Chlorobium
Chloroflexus
Chlorogloeopsis
Chondrococcus
Chromatium
Chromobacterium
Chroococcidiopsis
Chryseomonas
Citrobacter
Clavibacter
Coccobacillus
Comamonas
Coprococcus
Curtobacterium
Cylindrospermum
Cystobacter
Cytophaga

Dactylosporangium
Deinococcus
Deleya
Dermatophilus
Dermocarpa
Derxia
Desulfobulbus
Desulfococcus
Desulfomonas
Desulfotomaculum
Desulfovibrio
Dictyoglomus

Ectothiorhodospira
Edwardsiella
Eikenella
Elytrosporangium
Empedobacter
Enterobacter
Enterococcus
Erysipelothrix
Erythrobacter
Eubacterium
Ewingella
Excellospora

Falcivibrio
Fervidobacterium
Filomicrobium
Fischerella
Flavobacterium
Flectobacillus
Flexibacter
Flexiligladius
Flexithrix
Fluoribacter
Frankia
Frateuria
Fusobacterium

Gaffkya
Gardnerella
Gemella
Gemmiger
Geodermatophilus
Gloeobacter
Gloeocapsa
Gloeothece
Gluconobacter
Glycomyces

Haemophilus
Hafnia
Haliscomenobacter
Haloanaerobium
Halobacterium
Halobacteroides
Halococcus
Halomethanococcus
Halomonas
Hapalosiphon
Heliobacillus
Heliobacterium
Heliospirillum
Herbaspirillum
Herpetosiphon
Hyphomicrobium
Hyphomonas

Ilyobacter
Intrasporangium

Janthinobacterium

Kibdelosporangium
Kineosporia
Kingella
Kitasatoa
Kitasatosporia
Kluyvera
Koserella
Krusella
Kurthia
Kystella

Lachnospira
Lactobacillus
Lactococcus
Lampropedia
Leclercia
Leminorella
Leptospira
Leptospirillum
Leptothrix
Leptotrichia
Leuconostoc
Leucothrix
LPP Group
Lysobacter

Megasphaera
Melisococcus
Melittangium
Meniscus
Methanobacterium
Methanobrevibacter
Methanococcus
Methanogenium
Methanomonas
Methanomicrobium
Methanosarcina
Methanospirillum
Methylobacillus
Methylobacterium
Methylococcus
Methylomonas
Methylophaga
Methylophylis
Microbacterium
Microbispora
Microchaete
Micrococcus
Microcyclus
Microcystis
Microellobosporia
Micromonospora
Micromyces
Micropolyspora
Microscilla
Microtetraspora
Mobiluncus
Moellerella
Moraxella
Morganella
Morococcus
Mycobacterium
  (except M. avium, M. bovis, M. tuberculosis, and leprosy-derived strains)
Mycoplana
Mycoplasma
Myxococcus
Myxogeotrichum
Myxosarcina
Myxomicrobium

Nannocystis
Natronobacterium
Neisseria
Nitrobacter
Nitrococcus
Nitrosococcus
Nitrosolobus
Nitrosomonas
Nitrospora
Nocardiodes
Nocardiopsis
Nodularia
Noguchia
Nostoc

Obesumbacterium
Oceanospirillum
Oerskovia
Oscillatoria
Oxalobacter

Paracoccus
Pasturella (except P. multocida Type B)
Pectinatus
Pediococcus
Pedomicrobium
Peptococcus
Peptostreptococcus

Phenylobacterium
Phormidium
Photobacterium
Pilimelia
Planctomyces
Planobispora
Planococcus
Planomonospora
Plectonema
Plesiomonas
Polyangium
Promicromonospora
Propionibacterium
Propionispira
Prosthecobacter
Prosthecomicrobium
Protaminobacter
Proteus
Providencia
Pseudanabaena
Pseudonocardia
Psychrobacter

Rahnella
Renibacterium
Rhizobium
Rhodobacter
Rhodococcus
Rhodocyclus
Rhodomicrobium
Rhodopila
Rhodopseudomonas
Rhodospirillum
Rhodothece
Roseburia
Rothia
Rugamonas
Ruminococcus
Runella

Saccharobacterium
Saccharococcus
Saccharomonospora
Saccharopolyspora
Saccharothrix
Saprospira
Sarcina
Scytonema
Sebekia
Selenomonas
Seliberia
Serpens
Serratia
Simonsiella
Sphaerotilus
Sphingobacterium
Spirillospora
Spirillum
Spirochaeta
Spiroplasma
Spirosoma
Spirulina
Sporichthya
Sporocytophaga
Sporolactobacillus
Sporomusa
Sporosarcina
Stella
Stigmatella
Stomatococcus
Streptoalloteichus
Streptobacillus
Streptobacterium
Streptococcus
Streptomyces
Streptosporangium
Streptoverticillium
Succinimonas
Succinivibrio
Sulfolobus
Synechococcus
Synechocystis
Syntrophococcus

Tatlockia
Tatumella
Thermoactinomyces
Thermoactinopolyspora
Thermoanaerobacter
Thermoanaerobium
Thermobacteroides
Thermodesulfobacterium
Thermoleophilum
Thermomicrobium
Thermomonospora
Thermoplasma
Thermoypolyspora
Thermothrix
Thermus
Thiocapsa
Thiomicrospira
Thiosphaera
Thiothrix
Tolypothrix
Tonsillophilus
Treponema

Ureaplasma

Veillonella
Vitreoscilla

Wolinella

Xanthobacter
Xanthomonas
Xenococcus
Xenorhabdus
Xylella

Yersinia (except Y. pestis)

Zoogloea
Zymomonas

PROTOZOA

(genus and species level)

Acanthamoeba astronyxis
Acanthamoeba comandoni
Acanthamoeba griffini
Acanthamoeba palestinensis
Acanthamoeba rhysodes
Acanthamoeba terricola
Acanthamoeba tubiashi
Acanthoecopsis
Adelphamoeba
Amphidinium
Astasia
Bicosoeca
Blastocrithidia
Blepharisma
Bodo
Capsellina
Chlamydomonas
Chlorogonium
Cinetochilum
Cochliopodium
Colpoda
Crithidia
Crypthecodinium
Cryptobia
Cyathomonas
Cyclidium
Diaphanoeca
Didinium
Dientamoeba
Dunaliella
Endotrypanum
Entamoeba barreti
Entamoeba invadens
Entamoeba moshkovskii
Entamoeba terrapinae
Entosiphon
Euglena
Euplotes
Flabellula
Giardia
Glaucoma
Hartmannella
Heliophrya
Herpetomonas
Heteroamoeba
Hypotrichomonas
Isonema
Khawkinea
Leishmania adleri
Leishmania agamae
Leishmania entriettii
Leishmania gerbilli
Leishmania hertigi
Leishmania tarentolae
Leptomonas
Lingulamoeba
Lobomonas
Monocercomonas
Naegleria gruberi
Naegleria jadini
Naegleria lovaniensis
Naegleria thorntoni
Nosema
Nuclearia
Ochromonas
Oikomonas
Opisthonecta
Paraflabellula
Paramecium
Paramoeba

Paratetramitus
Pentatrichomonas
Phreatamoeba
Phytomonas
Plasmodium berghei
berghei
Pleistophora
Polytoma
Polytomella
Protacanthamoeba
Proteromonas
Pseudobodo
Rhynchomonas
Rosculus
Saccamoeba
Salpingoeca
Sorogena
Stephanopogon
Tetrahymena
Tetramitus
Tetratrichomonas
Tokophrya
Toxoplasma
Trichomitus
Trichomonas
Tritrichomonas
augusta
Tritrichomonas
mobilensis
Tritrichomonas suis
Trypanosoma avium
Trypanosoma
bennetti
Trypanosoma cervi
Trypanosoma
conorrhini
Trypanosoma lewisi
Trypanosoma mega
Trypanosoma
musculi
Trypanosoma
ranarum
Trypanosoma tamiasi
Trypanosoma theileri
Vahlkampfia
Vannella
Vorticella
Willaertia

FUNGI INCLUDING YEASTS

bortiporus
bsidia
caulospora
chaetomiella
chaetomium
chlya
ciculoconidium
ciculosporium
cladium
crasis
crocylindrium
crodictys
crodontium
crophialophora
crospeira
crothecium
ctinodendron
ctinomucor
ctinospora
cytostelium
garicus
grocybe
gialus
ellomyces (except
A. capsulata)
enomyces
atospora
lochytridium
lomyces
ysidium
anita
auroascus
blyosporium
brosiella
brosiozyma
oebidium
orphotheca
pelomyces
pullifera
ylocarpus
Amylomyces
Amylostereum
Anaptychia
Anguillospora
Aniptodera
Anixiella
Anixiopsis
Anthopsis
Anthostoma
Anthostomella
Anthracobia
Anthracothecium
Antipodium
Antrodia
Aphanoascus
Aphanocladium
Aphanomyces
Aphysiostroma
Apinisia
Apiognomonia
Apiosordaria
Apiotrichum
Apodus
Apophysomyces
Aquadiscula
Arachnomyces
Arachnotheca
Arcuadendron
Arenariomyces
Areolospora
Armillaria
Armillariella
Arnium
Arnoldia
Arthonia
Arthrinium
Arthroascus
Arthrobotrys
Arthrobotryum
Arthrocrisula
Arthroderma (except
A. simii)
Arthrographis
Arthropsis
Articulospora
Arxiella
Arxiozyma
Asbolisia
Ascobolus
Ascocalvatia
Ascoconidium
Ascocoryne
Ascocratera
Ascodesmis
Ascoidea
Ascorhizoctonia
Ascosphaera
Ascotricha
Ashyba
Asteromyces
Asterophora
Astraeus
Athelia
Athelopsis
Aulacostroma
Aureobasidium
Auricularia
Auxarthron

Bacidia
Bacillospora
Backusella
Bactridium
Bactrodesmium
Badarisama
Baeomyces
Baeospora
Bahustrabeeja
Balansia
Barya
Basidiobolus
Basidiomycetes
Basidioradulum
Basipetospora
Beltrania
Beltraniella
Benjaminiella
Berkleasmium
Berlesiella
Beverwykella
Bimuria
Biscogniauxia
Bispora
Bisporostibella
Bjerkandera
Blakeslea
Blastobotrys
Blastocladiella
Blastoschizomyces
Bloxamia
Boletus
Bondarzewia
Botryoascus
Botryobasidium
Botryoderma
Botryodiplodia
Botryohypoxylon
Botryomonilia
Botryosphaeria
Botryosporium
Botryotinia
Botryotrichum
Brachiosphaera
Brachysporiella
Brachysporium
Briosia
Buellia
Buergenerula
Bullera
Burgoa
Butlerelfia
Byssoascus
Byssothecium

Cacumisporium
Calcarispora
Calcarisporiella
Calcarisporium
Caldariomyces
Calocera
Calocybe
Caloplaca
Caloscypha
Calvatia
Camarops
Camarosporium
Campanella
Camposporium
Campylospora
Canariomyces
Cancellidium
Candelabrella
Candelariella
Cantharellula
Cantharellus
Capniomyces
Capnodium
Carpenteles
Catenaria
Catenularia
Caudospora
Caulochytrium
Cavostelium
Cenococcum
Centrospora
Cephaliophora
Cephaloascus
Ceraceomerulius
Ceraceosorus
Ceratobasidium
Ceratocystiopsis
Ceratopycnis
Ceratosphaeria
Cercoseptoria

Cerospora
Cercosporella
Cerinomyces
Cerioporopsis
Ceriporia
Ceriporiopsis
Cerrena
Cetraria
Chaetesbolisea
Chaetocladium
Chaetoderma
Chaetomella
Chaetomidium
Chaetopreussia
Chaetopsina
Chaetosartorya
Chaetosphaeria
Chaetosphaeronema
Chaetostylum
Chaetotyphula
Chalara
Chalaropsis
Chinosphaera
Chlamydoabsidia
Chlorencoelia
Chloridium
Chlorociboria
Chlorosplenium
Chmelia
Choanephora
Chondrostereum
Chorioactis
Chromelosporium
Chromocrea
Chrysosporium
Chytridium
Chytriomyces
Ciboria
Ciborinia
Ciliospora
Circinella
Cirrenalia
Citeromyces
Cladobotryum
Cladochytrium
Cladonia
Cladophialophora
Cladorrhinum
Clasterosporium
Clavariopsis
Clavatospora
Clavicorona
Clavispora
Cleistothelebolus
Clitocybe
Clitopilus
Clonostachys
Coccospora
Cochliobolus
Codinaea
Coemansia
Cokeromyces
Coleophoma
Coleosporium
Collecephalus
Colletotrichum
Collybia
Confertobasidium
Conidiobolus
Coniella
Coniochaeta
Coniochaetidium
Coniophora
Conioscypha
Coniothyrium
Conoplea
Cookeina
Cooksonomyces
Coprinus
Copromyces
Cordana
Cordyceps
Coriolellus
Coriolus
Corollospora
Corticium
Cortinarius
Corynascella
Corynascus
Corynespora
Coryneum
Crebrothecium
Creonectria
Cristaspora
Cristutariella
Cryphonectria
Cryptendoxyla
Cryptococcus
Cryptoporus
Cryptosphaeria
Cryptospora
Cryptosporella
Cryptosporiopsis
Cryptosporium
Cryptostroma
Ctenomyces
Culcitalna
Culicidospora
Culicinomyces
Cunninghamella
Custingophora
Cyathus
Cylindrobasidium
Cylindrocephalum
Cylindrocladiella
Cylindrocladium
Cylindrodendrum
Cylindrophora
Cylindrosporium
Cyphellophora
Cyptotrama
Cyrenella
Cystoderma
Cystofilobasidium
Cystostereum
Cytospora

Dacrymyces
Dacryopinax
Dactylaria
Dactylella
Dactylospora
Daedalea
Daedaleopsis
Daldinia
Darluca
Datronia
Debaryomyces
Debaryozyma
Deightoniella
Dekkera
Delitschia
Delortia
Dematium
Dendrophoma
Dendrospora
Dendrosporium
Dendrostibella
Dendryphiella
Dendryphion
Dendryphiopsis
Dermatocarpon
Dermea
Dermocystidium
Dermoloma
Dexhowardia
Diademospora
Diaporthe
Diatrypella
Dibotryon
Dichomera
Dichomitus
Dichotomocladium
Dichotomomyces
Dichotomophthora
Dichotomophthoropsis
Dicranidion
Dictyophora
Dictyosporium
Dictyostelium
Dictyotrichiella
Dictyuchus
Dicyma
Didymella
Didymium
Didymopsis
Didymosphaeria
Didymostilbe
Diheterospora
Dimargaris
Dimorphospora
Diplocarpon
Diplochytridium
Diplocladium
Diplodina
Diplogelasinospora
Diplomitoporus
Diplophyrs
Dipodascus
Dipsacomyces
Disarticulatus
Discosporium
Dispira
Ditiola
Doassansia
Doratomyces
Dothichiza
Dothiorella
Dothistroma
Drechslera
Duddingtonia
Dwayalomella

Echinobotryum
Echinocatena
Echinodontium
Echinopodospora
Echinosporangium
Echinostelium
Eeniella
Eidamia
Eladia
Eleutherascus
Ellisomyces
Elsinoe
Embellisia
Emericella
Emmonsia
Endomyces
Endophragmia
Endophragmiella
Endothiella
Engyodontium
Entomophthora
Entonaema
Entophlyctis
Ephelis
Ephemeroascus
Epichloe
Epicoccum
Epidermophyton
Eremascus
Eremomyces
Erynia
Eudimeriolum
Eupenicillium
Eurotium
Eutypa
Everhartia
Exobasidium
Exophiala
Exosporium
Exserohilum

Faeberia
Farrowia
Favolus
Favomicrosporon

Fellomyces
Femsjonia
Fennellia
Fennellomyces
Fibroporia
Fibulobasidium
Filobasidiella
Filobasidium
Filosporella
Fimaria
Fistulina
Flagellospora
Flammulina
Fomes
Fomitopsis
Fonsecaea
Fontanospora
Fonticula
Fuscoboletinus
Fusicladium
Fusicoccum
Fusidium

Gabarnaudia
Gaertneriomyces
Gaeumannomyces
Galerina
Galzinia
Gamsia
Ganoderma
Gelasinospora
Gelatinosporium
Geniculifera
Geniculospora
Geniculosporium
Geomyces
Georgefischeria
Geosmithia
Geotrichella
Geotrichum
Gerlachia
Gibellulopsis
Gilbertella
Gilmaniella
Glenospora
Gliocephalotrichum
Gliomastix
Gloeocercospora
Gloeocystidiellum
Gloeophyllum
Gloeoporus
Gloeosporium
Glomerella
Glomus
Glomium
Glutinoagger
Gnomonia
Godronia
Gonatobotrys
Gonatobotryum
Gongronella
Gonytrichella
Gonytrichum
Grammothele
Graphilbum
Graphis
Graphium
Grifola
Griphosphaeria
Griseopora
Guepiniopsis
Guignardia
Guilliermondella
Gymnascella
Gymnoascoideus
Gymnopilus
Gyoerffyella
Gyrodon
Gyrostroma
Gyrothrix

Hadrotrichum
Hainesia
Haligena
Haliphthoros
Halosarpheia
Halosphaeria
Halteromyces
Hamigera
Hanseniaspora
Hansenula
Hansfordia
Hapalocystis
Hapalopilus
Haplographium
Haploporus
Haplosporangium
Hapsidiospora
Harposporium
Hebeloma
Heleococcum
Helicascus
Helicobasidium
Helicondendron
Helicoma
Helicomonia
Helicomyces
Helicoon
Helicosporina
Helicosporium
Helicostylum
Heliscus
Helminthosporium
Hemicarpenteles
Hemiphacidium
Hendersonula
Henningsomyces
Hericium
Herpotrichia
Herpotrichiella
Hesseltinella
Heterobasidion
Heterocephalum
Heterosporus
Heterosporium
Heterotextus
Hexagonia
Hirschioporus
Hirsutella
Hobsonia
Hohenbuehelia
Holtermannia
Hormiactis
Hormoaccus
Hormodendrum
Hormographis
Hormonema
Hortaea
Humicola
Humicolopsis
Hyalocladium
Hyalopus
Hyalopycnis
Hyalotia
Hyalotiella
Hydronectria
Hygrophoropsis
Hygrophorous
Hymenochaete
Hymenoscyphus
Hymenula
Hyphochytrium
Hyphoderma
Hyphodontia
Hypholoma
Hyphopichia
Hypochnicium
Hypocrea
Hypomyces
Hypoxylon
Hysterium

Idriella
Incrustoporia
Induratia
Infundibura
Ingoldia
Ingoldiella
Inonotus
Irpex
Isaria
Ischnoderma
Issatchenkia
Itersonilia

Japonochytrium
Jugulospora
Junghuhnia

Kabatiella
Kaskaskia
Keratinomyces
Keratinophyton
Kernia
Khuskia
Kickxella
Kloeckera
Kluyveromyces
Kochiomyces
Korunomyces
Kretzchmaria
Kuehneromyces
Kuehniella
Kutilakesopsis

Labyrinthophoma
Labyrinthula
Laccaria
Lachnellula
Lactarius
Lacunospora
Laetiporus
Laetisaria
Lagenidium
Lambertella
Laricifomes
Lasiobolidium
Lasiobolus
Lasiosphaeria
Lasiostemma
Lateriramulosa
Laterispora
Laurilia
Laxitextum
Lecanora
Leccinum
Lecidea
Leciographa
Lecythophora
Leiothecium
Lemonniera
Lentescospora
Lentinula
Lentinus
Lentodium
Lenzites
Lepidopterella
Lepiota
Lepista
Lepteutypa
Leptodiscella
Leptodiscus
Leptodontidium
Leptographium
Leptolegnia
Leptomitus
Leptoporus
Leptosphaeria
Leptosphaerulina

Leptoxyphium
Leucogyrophana
Leucosporidium
Leucostoma
Libertella
Lignincola
Limnoperdon
Linderina
Lindra
Lindtneria
Lipomyces
Listeromyces
Lodderomyces
Lophodermium
Lophotrichus
Loramyces
Loweporus
Lulworthia
Lunulospora
Lycoperdon
Lyophyllum

Macrodiplodiopsis
Macrolepiota
Macronodus
Macrophoma
Macrophomina
Madurella
Magnaporthe
Malassezia
Malbranchea
Mammaria
Marasmiellus
Marasmius
Margaritispora
Mariannaea
Marssonina
Martininia
Massaria
Massariella
Mastigomyces
Mastigosporium
Megasporoporia
Melanconis
Melanconium
Melanocarpus
Melanodothis
Melanomma
Melanophoma
Melanoporia
Melanopsamma
Melanospora
Melanotus
Memnoniella
Menispora
Meria
Meruliopsis
Merulius
Metasphaeria
Metschnikowia
Metulodontia
Microascus
Microcyclus
Microdiplodia
Microdochium
Microeurotium
Micronectriella
Microporus
Microsphaeropsis
Microthecium
Microthelia
Microthyriella
Microxyphiella
Microxyphium
Minimedusa
Monacrosporium
Monascella
Monascus
Monilia
Monilella
Monilinia
Monochaetia
Monocillium
Monodictys
Monodisma
Monographella
Monosporascus
Monosporium
Monotospora
Monotosporella
Morchella
Mortierella
Mucor
Mucronella
Murogenella
Mutinus
Myceliophthora
Mycelium
Mycena
Mycoarachis
Mycoarctium
Mycocalia
Mycocalicium
Mycocandida
Mycocentrospora
Mycochlamys
Mycoderma
Mycoenterolobium
Mycogone
Mycoleptodiscus
Mycorrhizal fungi
Mycosphaerella
Mycosylva
Mycotorula
Mycotypha
Mycovellosiella
Myiocopron
Myriococcum
Myriosclerotinia
Myxotrichum
Myxozyma

Nadsonia
Naemacyclus
Naematoloma
Nais
Nakataea
Nanoscypha
Narashimhania
Naucoria
Nectria
Nectriella
Nematoctonus
Nematospora
Neobulgaria
Neocosmospora
Neocudoniella
Neodeightonia
Neogymnomyces
Neosartorya
Neotestudina
Neottiosporella
Neovossia
Neoxenophila
Neta
Neurospora
Nia
Nidula
Nidularia
Nigrospora
Nomuraea
Nowakowskiella
Nummularia

Ochroconis
Odontia
Oedocephalum
Ohleria
Oidiodendron
Oligosporus
Olpitrichum
Omphalotus
Onnia
Onygena
Oosporidium
Opegrapha
Opercullella
Ophiobolus
Ophioceras
Ophiodothella
Ophiostoma
Ophiovalsa
Orbicula
Orbimyces
Ostracoblabe
Oudemansiella
Ovulinia
Oxyporus
Ozonium

Pachybasium
Pachysolen
Pachytichospora
Paneolus
Panellus
Panus
Papularia
Papulaspora
Paracoccidiodes
Parapericonia
Paraphaeoisaria
Paraphoma
Parasitella
Paxillus
Peckiella
Pectinotrichum
Pellicularia
Penicillifer
Peniophora
Perenniporia
Periconia
Peronophythora
Pestalosphaeria
Pestalotia
Pestalotiopsis
Pestalozziella
Petalosporus
Petriella
Petriellidium
Petromyces
Peyronellaea
Pezicula
Peziza
Pezizella
Phaeococcomyces
Phaeocoriolellus
Phaeocytostroma
Phaeoisaria
Phaeoisariopsis
Phaeolepiota
Phaeosclera
Phaeoramularia
Phaeosclera
Phaeoscopulariopsis
Phaeosphaeria
Phaeotheca
Phaeotrichum
Phaffia
Phagomyxa
Phanerochaete
Phascolomyces
Phellinus
Phellodon
Phellostroma
Phialoarthrobotryum
Phialocephala
Phialomyces
Phialophora
Phialophorophoma
Phialophoropsis
Phillipsia
Phlebia

Phleospora
Phlyctochytrium
Pholiota
Phomina
Phycomyces
Phyllosticta
Phyllotopsis
Phymatotrichum
Physalospora
Physarum
Phytophthora
Pichia
Piedraia
Pilaira
Pilobolus
Piptocephalis
Piptoporus
Pirella
Pisolithus
Pistillaria
Pithoascus
Pithya
Pityrosporum
Plagiosphaera
Platyspora
Plectospiva
Pleiochaeta
Plenodomus
Pleospora
Plesiospora
Pleuroascus
Pleuropedium
Pleurothecium
Pleurotus
Plunkettomyces
Podaxis
Podosordaria
Podospora
Podoxyphium
Polydesmia
Polypaecilium
Polyporus
Polyschema
Polyscytalum
Polysphondylium
Polytrichiella
Poria
Porina
Poroconiochaeta
Poronia
Porosphaeria
Postia
Potebniamyces
Preussia
Protachyla
Protomyces
Protomycopsis
Protostelium
Psathyrella
Pseudallescheria
Pseudeurotium
Pseudoarachniotus
Pseudobasidiospora
Pseudobotrytis
Pseudocercospora
Pseudocercosporella
Pseudocochliobolus
Pseudofusarium
Pseudogymnoascus
Pseudohalonectria
Pseudohiatula
Pseudomicrodochium
Pseudonectria
Pseudopezicula
Pseudospiropes
Psilocybe
Pteridiosperma
Pteridiospora
Pterula
Ptychogaster
Puciola
Pulcherricium
Punctularia
Pycnoporellus
Pycnoporus
Pycnosporium
Pyramidospora
Pyrenopeziza
Pyrenophora
Pyrenula
Pyronema
Pythiopsis
Pythium

Radiomyces
Radulodon
Radulomyces
Raffaelea
Ramalina
Ramaria
Ramaricium
Ramichloridium
Ramularia
Ramulispora
Remispora
Renispora
Resinicium
Resupinatus
Rhexothecium
Rhinocladiella
Rhinotrichum
Rhizomucor
Rhizophylyctis
Rhizophydium
Rhizopogon
Rhizosphaera
Rhodoseptoria
Rhodosporidium
Rhodosticta
Rhodotorula
Rhodotus
Rhynchosporium
Rhyparobius
Riessia
Rigidoporus
Robillarda
Rogersiomyces
Rollandina
Rosulomyces
Rutstroemia

Saccharomyces
Saccharomycodes
Saccharomycopsis
Sagenoma
Saitoa
Saksenaea
Saprolegnia
Sapromyces
Sarcinomyces
Sarcinosporon
Sarcogyne
Sarcoscypha
Sarcotrochila
Sarea
Sarocladium
Sartorya
Scedosporium
Schizoblastosporion
Schizochytrium
Schizophyllum
Schizoplasmodiopsis
Schizosaccharomyces
Schizothecium
Schwanniomyces
Scirrhia
Scleroderma
Scleroderris
Scleromitrula
Sclerophoma
Sclerotinia
Sclerotium
Scolecobasidium
Scoleconectria
Scopulariopsis
Scorias
Scorpiosporium
Scytalidium
Scytinostroma
Sebacina
Seimatosporium
Seiridium
Selenophoma
Septofusidium
Septogloeum
Septomyxa
Septonema
Septoria
Septotinia
Serpula
Sesquicillium
Setosphaeria
Shanorella
Sibirina
Sigmoidea
Sirobasidium
Sirococcus
Sirodesmium
Sistotrema
Skeletocutis
Smittium
Sordaria
Sorosporium
Spadicoides
Sparassis
Spegazzinia
Speiropsis
Sphaceloma
Sphaerobolus
Sphaeronema
Sphaeropsis
Sphaerospora
Sphaerosporella
Sphaerostilbe
Spicaria
Spicellum
Spilocaea
Spiroidium
Spiromastix
Spiromyces
Spirosphaera
Spizellomyces
Spondylocladium
Spongipellis
Sporidiobolus
Sporobolomyces
Sporodiniella
Sporopachydermia
Sporormia
Sporormiella
Sporoschisma
Sporothrix
Sporotrichum
Squamuloderma
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Stachylidium
Stagonospora
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Staphylotrichum
Staurophoma
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Steganosporium
Stemonitis
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Stephanoascus
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Stephanosporium
Stephensia
Stereocaulon
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Sterigmatosporidium
Stigmina
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Strattonia
Striatosphaeria
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Stropharia
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Stypella
Subulispora
Suillus
Swampomyces
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Sympodiomyces
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Syncephalis
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Syringospora
Syzygites

Talaromyces
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Thamnostylum
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(Sec. 4, Pub. L. 96-72 (50 U.S.C. App. 2403); E.O. 12214, 45 FR 29783, May 6, 1980; Dept. of Organization Order 10-3, (45 FR 6141, Jan. 25, 1980) and International Trade Admin. Organization and Function Order 41-4 (45 FR 11862, Jan. 30, 1980); secs. 6, 13, 15, 16, and 21, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended; E.O. 12002 (42 FR 35623, July 11, 1977); and E.O. 12214 (45 FR 29783, May 6, 1980); secs. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. 12470 of Mar. 30, 1984 (49 FR 13099, Apr. 3, 1984))

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EDITORIAL NOTE: For additional FEDERAL REGISTER citations to Supplement No. 1 of § 799.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

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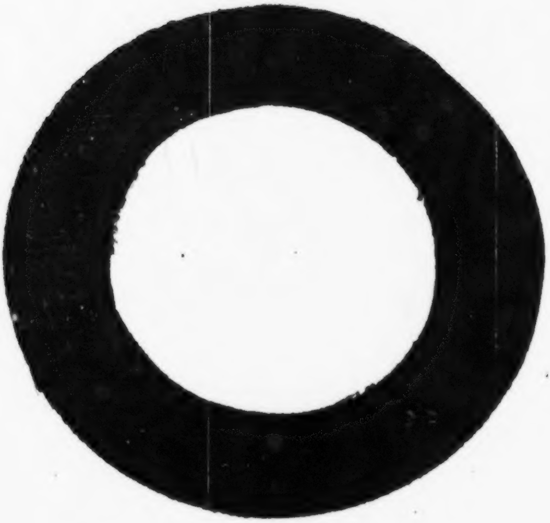

Redesignation Table

53 FR 37751, Sept. 28, 1988, the existing regulations of the International
de Administration, set forth in 15 CFR Chapter III, Subchapter C were re-
gnated and transferred to Chapter VII. The following redesignation table
s the relationship between Chapter III regulations and the redesignated
s in Chapter VII:

rt	Present 15 CFR Designation		Part	New 15 CFR Designation
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	(§§ 369.1-369.8)	Restrictive Trade Practice or Boycotts	769	(§§ 769.1-769.8)
	(§§ 370.1-370.15)	Export Licensing General Policy and Related Information	770	(§§ 770.1-770.15)
	(§§ 371.1-371.23)	General Licenses	771	(§§ 771.1-771.23)
	(§§ 372.1-372.13)	Individual Validated Licenses and Amendments	772	(§§ 772.1-772.13)
	(§§ 373.1-373.8)	Special Licensing Procedures	773	(§§ 773.1-773.8)
	(§§ 374.1-374.9)	Reexports	774	(§§ 774.1-774.9)
	(§§ 375.1-375.9)	Documentation Requirements	775	(§§ 775.1-775.9)
	(§§ 376.1-376.18)	Special Commodity Policies and Provisions	776	(§§ 776.1-776.18)
	(§§ 377.1-377.15)	Short Supply Controls and Monitoring	777	(§§ 777.1-777.15)
	(§§ 378.1-378.8)	Special Nuclear Controls	778	(§§ 778.1-778.8)
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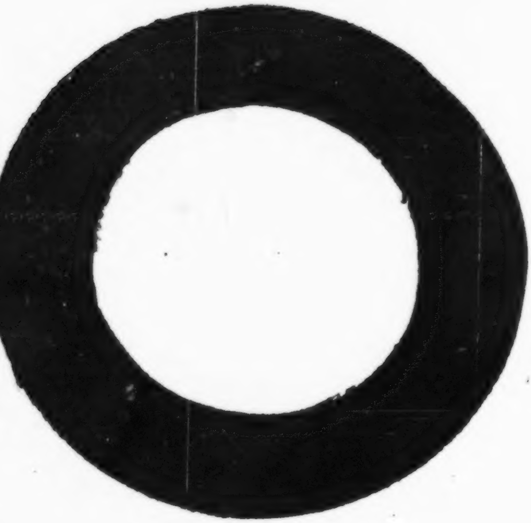

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